SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 76

ELLIOTT ASHTON WELSH, II,
Appellant,

vs.

UNITED STATES OF AMERICA,
Appellee.

APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

APPENDIX

J. B. TIETZ
257 S. Spring Street
Los Angeles, California 90012
Attorney for Appellant

(Filed April 1, 1969. Jurisdiction Postponed
October 13, 1969)

INDEX

RELEVANT DOCKET ENTRIES

1. May 4, 1966. Indictment for refusal to submit to induction (C.T.2)
2. May 25, 1966. Trial (C.T.4)
3. May 26, 1966. Motion for Judgment of Acquittal filed (C.T.5)
4. June 1, 1966. Judgment. (C.T.7)
5. June 6, 1966. Notice of Appeal (C.T.9)
6. September 23, 1968. Order Directing Filing of Opinion and Dissenting Opinion and Filing and Recording of the Judgment.
7. January 31, 1969. Order Denying Petition for Rehearing.
8. February 18, 1969. Motion for Order Extending Time (Supreme Court).
9. April 28, 1969. Order Extending Time for Filing Petition for a Writ of Certiorari to May 30, 1969.
10. October 13, 1969. Order Granting Petition.

DOCKET ENTRIES OF THE DISTRICT COURT

No. 36138 Criminal
MINUTES OF THE COURT
Date: May 25, 1966
At; Los Angeles, Calif.

PRESENT: Hon. RUSSELL E. SMITH, District Judge Deputy Clerk: Neil P. Cronin Reporter: Lloyd D. Olson U.S. Attorney by Asst U.S. Attorney: Anthony M. Glassman Defendant on bond Counsel J. B. Tietz

PROCEEDINGS: COURT TRIAL

Defendant and counsel present.

Malcolm F. Miller, is called, sworn and testifies for plaintiff. Plaintiff's exhibit 1 is admitted. Tobias E. Matthews, is called, sworn and testifies for plaintiff. Government Rests. Ruling reserved on defendant's motion for Judgment of Acquittal. Malcolm F. Miller, is recalled as a witness by the defendant.

Elliot A. Welsh, is called, sworn and testifies for defendant. Defendant's exhibit 3 is admitted by stipulation. Alice M. Hodge, is called, sworn and testifies for defendant. Defendant rests.

Counsel for defendant argues in support of motion for Judgment of Acquittal. Counsel for plaintiff argues in opposition and Court orders matter submitted.

Court orders bond of defendant continued in effect and recesses until 9:30 A.M., May 26, 1966.

Filed motion for Judgment of Acquittal by defendant.

John A. Childress
Clerk
By /s/ E. Ralph Davis
Deputy Clerk

No. 36138 Criminal
MINUTES OF THE COURT
Date: June 1, 1966
At: Los Angeles, Calif.

PRESENT: Hon. RUSSELL E. SMITH, District Judge Deputy Clerk: Neil P. Cronin Reporter: Lloyd D. Olson U.S. Attorney by Asst U.S. Attorney: Anthony M. Glassman Defendant on bond Counsel J. B. Tietz

PROCEEDINGS: COURT TRIAL

This cause was called for sentence this day. Defendant and his counsel present.

Defendant's motion for Judgment of Acquittal is ordered denied. Remarks by Attorney Tietz on behalf of defendant.

Court sentences defendant to 3 years imprisonment and Stay of Execution is granted until June 10, 1966.

Defendant released on his own recognizance until June 10, 1966 at which time other arrangements with respect to stay and bond shall be more.

John A. Childress
Clerk
By /s/ E. Ralph Davis
Deputy Clerk

On this 1st day of June, 1966 came the attorney for the government and the defendant appeared in person and[1] by counsel.

IT IS ADJUDGED that the defendant has been convicted upon his plea of[2] not guilty, and a finding of guilty of the offense of knowingly refusing to be inducted into the Armed Forces of the United States in violation of Title 50, United States Code, Appendix 462 of the Draft Act as charged[3] in the Indictment of 1 count and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of[4] three (3) years.

---

[1]Insert "by counsel" or "without counsel; the court advised the defendant of his right to counsel and asked him whether he desired to have counsel appointed by the court, and the defendant thereupon stated that he waived the right to the assistance of counsel."

[2]Insert (1) "guilty," (2) "not guilty, and a verdict of guilty," (3) "not guilty, and a finding of guilty," or (4) "nolo contendere," as the case may be.

[3]Insert "in count(s) number " if required.

[4]Enter (1) sentence or sentences, specifying counts if any; (2) whether sentences are to run concurrently or consecutively

IT IS ORDERED that a Stay of Execution is granted until June 10, 1966.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ Russell E. Smith
United States District Judge
/s/ Neil P. Cronin
Clerk

John A. Childress, Clerk
Filed: June 1, 1966

INDICTMENT

The Grand Jury charges:

(50 U.S.C. App. 462)

Defendant ELLIOTT ASHTON WELSH II, a male person within the class made subject to selective service under the Universal Military Training and Service Act, registered as required by said Act and became a registrant of Local Board No. 95 said Board being then and there duly created and acting, under the Selective Service System established by said Act, in Los Angeles County, California, in the

---

and, if consecutively, when each term is to begin with reference to termination of preceding term or to any other outstanding unserved sentence; (3) whether defendant is to be further imprisoned until payment of the fine or fine and costs, or until he is otherwise discharged as provided by law.

Central Division of the Southern District of California; pursuant to said Act and the regulations promulgated thereunder, the defendant was classified in Class I-A and was notified of said classification and a notice and order by said Board was duly given to him to report for induction into the armed forces of the United States of America on December 8, 1965, in Los Angeles County, California, in the division and district aforesaid; and at said time and place the defendant knowingly failed and neglected to perform a duty required of him under said Act and the regulations promulgated thereunder in that he then and there knowingly failed and refused to be inducted into the armed forces of the United States as so notified and ordered to do.

A True Bill

/s/ Earl J. Esse
Foreman

/s/ Manuel L. Real
United States Attorney

GOVERNMENT'S EXHIBIT 1

(Registrant Will Make No Entries on This Page)

Dates	Minutes of Actions by Local Board and Appeal Board and on Appeal to the President	Vote Yes	Vote No
DEC 14 1961	1A Bsw	2	0
DEC 21 1961	Form 110 Mailed		
JAN 15 1963	Application for Permit rec'd.		
FEB 5 1963	SSS Form 300 issued expiring March 16, 1964		
MAR 27 1964	SSS Form 223 mailed for physical on APR 30 1964		
4-24-64	Completed SSS Form 150 rec'd. - opposed to combatant service		
MAY 8 1964	SSS Form 62 mailed. Acc		
MAY 12 1964	1-A-O	3	-
MAY 15 1964	Form 110 Mailed		
5-25-64	Letter of Appeal and request for personal appearance received		
JUN 5 1964	Form C-310 mailed reg. to appear before Board at 9:45 A.M., 6-9-64		
JUN 9 1964	~~Reclassify~~ 1A O Bsw	3	0
JUN 10 1964	Form 110 Mailed		
JUN 19 1964	Letter of Appeal received		
JUN 19 1964	File forwarded to Appeal Board		
7-23-64	The Appeal Board tentatively determines this registrant should not be classified in I-O or in a lower class.	3	0
11/15/65	File returned by apoeal board, class. I-A, vote 3-0 NOV 10 1965		
NOV 19 1965	SSS Form 110 "Notice of Classification" mailed to the registrant.		
NOV 22 1965	SSS Form 252 mailed for Induction on DEC 8 1965		
12/21/65	Papers returned - Refused induction		
DEC 29 1965	File forwarded to SHQ		
1/5/66	File ret. from SHQ		
Jan 10 1966	with cc of ltr from SHQ dated 3 Jan 1966 SSS-301 mld to U.S.Attorney; cc to SHQ		
1/19/66	File forwarded to SHQ		

GPO 55-16-70987-1-7

In Answer to Series II, Item 2.

I believe that human life is valuable in and of itself; in its living; therefore I will not injure or kill another human being. This belief (and the corresponding "duty"[1] to abstain from violence toward another person) is not "superior to those arising from any human relation." On the contrary: it is essential to every human relation. I cannot, therefore, conscientiously comply with the Government's insistence that I assume duties which I feel are immoral and totally repugnant. One might say, in this instance at least, that my duty to the Government is incalculably inferior to "those arising from any human relation."

1301 Westwood Blvd.
Los Angeles 24, Calif

1. I think that the use of the word duty, to refer to one's reasons for refusing to kill, is entirely inappropriate. It seems absurd to be obliged to demonstrate the existence of some sort of "duty" which forbids one man to kill another.

In Answer to Series II, Item 3.

Taken literally, this question is very difficult to answer. A sane, civilized human being believes it is wrong to willfully kill or injure another. Ask him how, when, and from whom or from what source he acquired this belief and he will probably not be able to answer. The relevant question is: explain how, when and from whom or from what source you acquired the belief that, in wartime, your status as a sane, civilized human being cannot be revoked. The answer to this question is easier. I came to my position (more precisely, realization) through a series of conversations with a number of pacificists, starting in August of 1962.

1301 Westwood Blvd.
Los Angeles 24, Calif

In Answer to Series II, Item 5.

I presume that the term force used here, means the physical act of preventing someone from doing something, compelling someone to do something, or threatening such prevention or compulsion. Of course physical restraint or compulsion is proper in some circumstances—and the circumstances dictate what sort of force to employ. One may hold back a child who is trying to put his fingers into a light socket, to prevent the child from being electrocuted. One may shoot the child to prevent him from putting his fingers into a light socket—and thus prevent him from being electrocuted. The former exercise of force seems more wise.

1301 Westwood Blvd.
Los Angeles 24, Calif

Elliott Ashton Welsh II
May 25, 1964

Selective Service
Draft Board #95
1301 Westwood Blvd.
Los Angeles, Calif., 90024

RECEIVED
Local Board
MAY 26 1964

1301 Westwood Blvd.
Los Angeles 24, Calif.

Gentlemen:

I wish to appeal my I-A-O classification, to amend my claim for exemption as a conscientious objector (for reasons given below), and to request a personal appearance before the Board if the Board deems it necessary for me to elucidate any of my statements below.

The substance of my amendation deals only with Series I of SSS Form 150, "Claim for Exemption," in which I indicated that I claimed exemption from combatant training and service. I wish to reiterate and sustain that claim and, further, to add that I now object to noncombatant service in the armed forces also.

When I was confronted with the choice between the two statements in Series I I chose statement "A" because I felt that by refusing combatant training I would still be able to perform service while still maintaining my commitment to my beliefs as set forth in Series II. After further reflection, however, I now feel that any participation in the armed forces implicitly condones and contributes to the mission of the military. For example: if drafted, I would probably be sent into the Army Medical Service. I might be assigned to an examination center to help conduct pre-induction physical examinations.[1] I cannot very well abjure the use of violence while facilitating the operation of the selective service system at the same time. One who would not be a butcher had best not become a meat packer.

Thank you for your consideration.

Sincerely
Elliott Ashton Welsh

1. Any example is valid since I obviously have no choice of duties.

PERSONAL APPEARANCE

Elliott Ashton Welsh II
SS No. 4 95 41 736

June 9, 1964

Present: Roger S. Marshall
Alvin M. Asher
Irl R. Goshaw

Registrant stated he was classified I-A-O but afte thinking it over he feels he should be classified I-O. He says the letter in this file states his feelings.

Registrant was informed that since he has appealed the I-A-O classification, his file would go to the Appeal Board and they would investigate to determine whether or not he qualifies for a I-O classification.

Notes taken by:

Alma Whisenant

Alma Whisenant, Coordinator

June 18, 1964

4-95-41-736

Selective Service
Local Board No. 95
Los Angeles County
1301 Westwood Blvd.
Los Angeles, Cal.; 90024

Gentlemen:

I hereby appeal my 1-A-O classification of June 10, 1964, on grounds set forth in my letter of May 25, 1964, to 1-O.

I wish to protest the arbitrary manner of classification, under which I could be classified 1-A-O, but not considered eligible for 1-O classification. This seems inconsistent.

I deplore* the method used by the Board during my personal appearance to mitigate the Board's responsibility in my case. I appeared before the Board to answer questions about my appeal and to explain my position in the light of those answers. I asked whether any members of the Board had any questions about my appeal. They

* and protest

had none. Then one of the Board members said, "We don't have the authority to pass on your classification. It will have to go to the Appeal Board."[1] This is an outright lie, since the Board does indeed have the power to grant any classification as it sees fit. The only possible circumstance I can imagine, granting that the Board was acting in good faith, in which this statement could be justified is if the Board is required, as a matter of Selective Service policy, to pass such cases as mine on to the Appeal Board. In this circumstance x why have a personal appearance before the Board at all? I find it rather hard to defend myself against the private policies the Selective Service seems to favor. My position was stated quite clearly, I think, in my original letters: if

1. This quotation is as close as I can recall. A secretary was transcribing the conversation so the statement should be a matter of record.

the Board disagrees with me & thinks I deserve some intimation of the reasons for its disagreement.

Sincerely,

Donald Welch II

1501 Westwood Blvd.
Los Angeles 24, Calif.

State of [illegible]

Date 28 July 64

[illegible]

Honorable Francis G. Whelan
The United States Attorney
Federal Post Office & Courthouse Bldg.
312 North Spring Street
Los Angeles, California 90012

Subject: WELCH, II, Elliott Ashton
SS No. 4-55-41-736

Dear Sir:

The complete selective service file of the above named registrant is forwarded under the provisions of Section 1626.25(b) of Selective Service Regulations.

This panel has reviewed the file and tentatively determined the registrant should not be classified in Class I-O or in a lower class.

This file is forwarded for the purpose of securing an advisory recommendation from the Department of Justice.

Please acknowledge receipt of the file on the copy of this letter.

Very truly yours,

BY DIRECTION OF THE BOARD OF APPEAL
Panel No. 3

Clerk, Board of Appeal

Encl.- Cover sheet

UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

Address Reply to the Division Indicated and Refer to Initials and Number

Appointed for the Selective Service System in the Southern Federal Judicial District of the State of California

AUG 27 1965

AUG 23 1965

Chairman, Appeal Board, Southern
District of California, Panel No. 3
Selective Service System
Room 206 Bendix Building
1206 Maple Avenue
Los Angeles 15, California

Re: Elliott Ashton Welsh II
Conscientious Objector

Dear Sir:

As required by Section 6(j) of the Universal Military Training and Service Act, as amended, an inquiry was made by the Department of Justice in the captioned matter and an opportunity to be heard on his claim for exemption as a conscientious objector was given to the registrant by Mr. Owen J. Brady, a Hearing Officer for the Department of Justice.

The information obtained from the inquiry and considered by the Department of Justice in arriving at its recommendation is contained in the Resume of the Inquiry attached hereto and made a part hereof.

Registrant was born in Culver City, California on November 7, 1941. His mother is a Christian Scientist and the registrant claims membership in no religious organization. He graduated from high school at Santa Monica, California in June 1959 in the top one-quarter of his graduating class of 547. He attended the University of California at Los Angeles from the fall of 1959 until his dismissal for scholastic reasons in June 1960, and attended Santa Monica City College from the fall of 1960 through the summer of 1961 attaining B and C grades. He attended Montana State University, Missoula, Montana from September 1961 until his dismissal for low grades in January 1963,

and that after he withdrew from two courses at the University of California at Los Angeles in the summer of 1963. His SSS Form 100, received by his local board in Decmeber 1961, made no claim of conscientious objection. His SSS Form 150, received by his local board on April 24, 1964, claimed conscientious objection as to combatant but not noncombatant military training and service. By letter from the registrant received by his local board on May 25, 1964, registrant stated that he wished to amend his SSS Form 150 to claim conscientious objection as to combatant and noncombatant military training and service. His local board classified him I-A-O after a personal appearance by registrant before it and he appealed.

Annexed hereto and made a part hereof is Exhibit A submitted to the Department of Justice in behalf of the registrant.

Registrant appeared before the Hearing Officer at Los Angeles, California on July 19, 1965, accompanied by an attorney. The registrant acknowledged having received a copy of the resume and stated in correction of the first paragraph that he is not a Christian Scientist. He told the Hearing Officer that he had attended Presbyterian Sunday school weekly from age 5 to age 12, and had attended Christian Science Church weekly from age 12 to age 16 or 17, and that since age 17 he has not attended any church except that since then he has attended the Unitarian Church on two or three occasions and has attended meetings of the Quakers on two or three occasions. He qualified his regular attendance at Sunday school and church by stating that his mother made him attend and that he never got anything out of it. He said he had engaged in a peace march sponsored by the Committee for Non-Violent Action-West in the summer of 1961, when a number marched from San Diego north to Vallejo, California, and he participated in the match from Port Hueneme to Carpenteria, a distance of ten or fifteen miles, and that he had demonstrated at Vandenberg Air Force Base.

The Hearing Officer commented that the registrant appeared to be intelligent, notwithstanding his low grades at the University of California at Los Angeles and Montana State University. He questioned the registrant as to his belief in the existence of God or a Supreme Being and reported that the registrant has no belief in such; that he believes in the "natural law" as a force outside of men but the force as such is not an entity, and he seemed unable to explain further what he meant by the "force". The Hearing Officer reported that as to "natural law" the registrant recognized that, just as there are certain physical laws in nature, such as gravity and electrical impulses, there are laws affecting the relationship of human beings such as the feeling of gregariousness; that ethics are implicit within us governing the conduct of individuals, which he refused to relate to the questions of guilt, punishment or reward, and he does not believe in a life after death or in a life of what might be called a human soul. He stated that human life is valuable both to the individual and to the world at large; that his primary objection to military service is that the military is involved in taking a human life, and that life should not be voluntarily taken. He said he believed that war is a social institution which has a bad effect on the society which engages in it, and that war does not settle things, is inefficient and wasteful; that "if I see a situation is foolish or unreasonable then I will not participate in it." He said he believed in birth control but was uncertain whether birth control meant taking life; that he believed in preventive birth control and not in the interruption of gestation "if it can be helped." He said that he himself would want to limit his family for social reasons. The registrant stated that there should be no armies, even for defense or resistance to aggression, and even if another political force should take over the country. As to the question of a policeman apprehending a criminal, his convictions were not explained or made clear. He reiterated that he did not believe in taking a human life but he did not see it as a moral or religious wrong but simply as a social "error" or illogical act. The Hearing

Officer reported that several times the registrant denied that any of his thinking had a religious basis. He conceded the possibility that some of his early religious training may have rubbed off on him but he stressed that his belief is that his opinions have been formed by reading in the fields of history and sociology, and that they are purely "rational" as opposed to religious.

The Hearing Officer found that the registrant is sincere in his convictions but that his ideas are incomplete and,, as the registrant admitted, in the process of formulation. He found that the registrant does not believe in life after death, does not believe in God or in any other being or entity outside of man which has any authority over men. He found that the registrant does not believe in any system of ethics or in a set of prescribed rules of human conduct except to the extent that he feels that some things are "right" and some things are "wrong" such as killing, stealing, adultery and the like, his authority for these feelings being that they are "laws of being" tantamount to conscience. He found that the registrant does not believe in religious beliefs or in authority for such beliefs. The Hearing Officer found no religious basis for the registrant's conscientious-objector claim and concluded that the registrant's claim does not come within the provisions of the statutory exemption in the Universal Military Training and Service Act, as amended. He recommended that the conscientious-objector claim of the registrant be not sustained.

In his Special Form for Conscientious Objector as received by the local board on April 24, 1964, the registrant signed part (A) of Series I claiming exemption from combatant military training and service only, and also struck out the words "my religious training and" so that the statement reads, "I am, by reason of belief, conscientiously opposed to participation in war in any form. I, therefore, claim exemption from combatant training and service in the Armed Forces." The registrant also marked the "No" box in

Question 1 of Series II of that form. In his Exhibit A, hereto annexed, the registrant has sought to modify his answer to Question 1 of Series II stating:

> "* * * I wish to have this answer stricken and the question left open. In answering the question I understood the term 'Supreme Being' to mean, 'The eternal and infinite Spirit; God.'[1] I do not pretend to know what 'The eternal and infinite Spirit' may be, and I do not believe in God--in the everyday sense[2]-- and I so indicated. * * *"

In his note 1 the registrant has referred to Webster's New Collegiate Dictionary, Sixth Edition, page 853, and in his note 2 he has referred to the standard notion of God in Webster's Third New International Dictionary, Unabridged. The registrant in his Exhibit A has attempted amendment of his Special Form for Conscientious Objector at the time of the hearing to leave the question of existence of a Supreme Being open, but he is apparently content with his denial of religious training and belief. It is believed that the record of the registrant in substance denies religious training and belief as well as belief in a Supreme Being but claims exemption by reason of his personal belief. In the case of United States v. Seeger, 380 U.S. 163, the test for exemption from military service as a conscientious objector is stated to be whether a given belief, that is sincere and meaningful, occupies a place in the life of its possessor parallel to that filled by the orthodox belief in God of one who clearly qualifies for the exemption. The Department of Justice believes that the record and the findings of the Hearing Officer are such that the registrant does not come within the statutory definition of conscientious objector as construed in the Seeger case.

The Department of Justice concludes that the registrant has failed in his burden of proof and recommends to your Board that his conscientious-objector claim be not sustained and that he be not classified in Class I-O or in Class I-A-O.

The Selective Service Cover Sheet in the above case is returned herewith.

Sincerely,

T. Oscar Smith

T. Oscar Smith
Chief, Conscientious-Objector Section

Resume of the Inquiry

Re: Elliott Ashton Welsh II

Conscientious Objector

Registrant was born in Culver City California, on November 7, 1941. He is a Christian Scientist. The inquiry does not disclose the religious affiliation of his parents.

Records of Santa Monica High School, Santa Monica, California, reflect that registrant entered this institution in June, 1956, and was graduated in June, 1959, ranking academically in the top quarter of a class of 547 students. During the summer of 1959 he attended Santa Monica City College, Santa Monica, California, receiving a grade of A in a 5-hour mathematics course.

Records of the University of California at Los Angeles, California reflect that registrant was admitted to this institution at the beginning of the fall semester in 1959; and that he was placed on probation in January, 1960, and dismissed for scholastic reasons in June, 1960. Nevertheless, while there he received grades of "E" in courses in Analytical Geometry, Automatic Digital Computer, Introduction to Psychology, and Fluid Heats Sound. He again attended Santa Monica City College for the 1960 fall term, and the 1961 spring and summer terms, maintaining approximately an average grade of "B", for the first two terms and one of "C" for the 1961 summer term.

Records of Montana State University, Missoula, Montana, reflect that registrant entered that institution as a mathematics major in September, 1961. During the summer of 1962, he took a course at Santa Monica City College, receiving a grade of "F". Registrant was dismissed from

Montana State University for low grades in January 1963. Its records have a notation that due to physical disability, registrant was exempt from ROTC and athletic activities. During the second summer session in 1963, registrant took and withdrew from two courses at the University of California at Los Angeles. In view of his withdrawal, registrant received no grades in these courses.

At the time of the inquiry, the records clerk of Santa Monica City College stated that most instructors were on vacation, and that past experience indicated that owing to the size of classes, instructors were generally unable to recall former students. An employee of the University of California at Los Angeles made a generally similar statement with respect to instructors at that institution. At the time of the inquiry, Montana State University was in recess.

While unemployed and living off an inheritance, registrant shared an apartment in Venice, California from about February, 1963, to June, 1964, with a fellow student at the University of California at Los Angeles who had earlier been a high school mate of registrant. This apartment mate considers that registrant is a person of good character and reputation. Registrant told this friend that registrant could never bring himself to kill another person for any reason, and that registrant is opposed to capital punishment. The owner of this apartment considers that registrant is a person of good character and reputation, but is uninformed as to registrant's views on military service.

Another such fellow college student and schoolmate likewise considers that registrant is a person of good character and reputation and states that he is strongly opposed to the killing of other persons and to capital punishment. This sometime schoolmate states that registrant has previously participated in peace marches. Both associates consider that registrant is sincere in his claim to be a conscientious objector.

At the time of the inquiry, registrant had shared living quarters for about four months with a male student whom registrant first met while attending the University of California at Los Angeles. This roommate similarly characterized registrant as a person of good character and reputation, as one sincerely opposed on personal, rather than religious, grounds to killing another person. While registrant's discussion with his roommate of registrant's opposition to military service has been brief, the roommate considers that registrant is sincere in his claim to be a conscientious objector. The roommate adds that registrant does not know any people in the neighborhood in which the two of them reside.

Disciplinary and dormitory officials and personnel of Montana State University have no record that registrant was a disciplinary problem and have no recollection of him. One dormitory housekeeper states that registrant was a reserved person, seemingly with few friends, and that in his conversations with her did not indicate that he is conscientiously opposed to military service.

Registrant's family moved to the 800 block of 26th Street, Santa Monica, California, in 1942. A couple who are next-door neighbors to registrant's family consider him a person of good character and reputation. The husband has heard registrant's mother mention that registrant is a conscientious objector. The husband believes that registrant's claim to be one is probably sincere. The wife describes registrant as a quiet, studious person, and believes that registrant is sincere in his claim to be a conscientious objector. She has heard that registrant has succeeded in developing a successful method or system of winning at gambling and that registrant goes periodically to Las Vegas to gamble.

The father-in-law of registrant's sister has known registrant for many years, and characterizes him as a person of good character and reputation, quiet, and studious. The father-in-law, who is aware of registrant's claim to be a conscientious objector, considers that registrant is

sincere in making that claim, and that registrant leads a life consistent with it. The husband of registrant's sister was a high schoolmate of registrant and a fellow student at Santa Monica City College. During the past three or four years, this brother-in-law has often heard registrant express pacifist views. On the basis of registrant's belief that war is unjustifiable in any circumstance, registrant's brother-in-law considers that registrant is sincere in his claim to be a conscientious objector.

No criminal or credit record respecting respondent was located in the areas in which he has resided and attended school in Los Angeles and Santa Monica, California, and Missoula, Montana.

PREPARED: November 27, 1964

Elliott A Welsh II
818 26th Street
Santa Monica, Calif.
June 22, 1965

Local Board No. 95
Los Angeles County
1301 Westwood Blvd.
Los Angeles 24, Cal.

Sirs:

In my original claim for classification as a conscientious objector (Form SSS 150) I answered the question (1.), "Do you believe in a Supreme Being?" in the negative. I wish to have this answer stricken and the question left open. In answering the question I understood the term "Supreme Being" to mean, "The eternal and infinite Spirit; God."[1] I do not pretend to know what "The eternal and infinite Spirit" may be, and I do not believe in God—in the everyday sense[2]—and I so indicated.

It has since been brought to my attention that the term "Supreme Being" may have a broader meaning than the one I had given it (though <u>what</u> it means exactly I have been unable to learn), and that I would be well advised to better inform the Board in more detail about my beliefs concerning ethical conduct and conscience, given the possibility that I do, after all, believe in a "Supreme Being."[3]

Presumably[4] the Board is interested in the nature of my belief insofar as it relates to the Law. The answer to the problem would seem to lie in the answer to the question, "<u>Why</u> am I a conscientious objector?"[5,6,7] "What concepts do I adhere to as guiding principles?"

I believe each of us to possess some sort of ethical apparatus, a conscience[8], if you will. A sense of conscience is extremely difficult to describe so that it means something.[9] Indeed, some philosophers declare that it is impossible to talk about ethics in a rigorous fashion. That is, it is impossible to assert the absolute truth or falsity of an ethical law.[10] But, despite the lack of logical validation, we do act, we do make decisions. Thus only in our actions[11] and ethical decisions is our sense of conscience revealed.

I have not been specific about my refusal to participate in the military vis-à-vis conscience. I do not believe it is possible to be. I can only act according to what I am and what I see. And I see that the military complex wastes both human and material resources, that it fosters disregard for (what I consider a paramount concern) human needs and ends; I see that the means we employ to "defend" our "way of life" profoundly change that way of life. I see that in our failure to recognize the political, social, and economic realities of the world, we, as a nation, fail our responsibility as a nation. I see that in our refusal to recognize the "enemy" as a collection of individuals, we also lose our sense of individuality. It is suggested that those who implement policy are fully aware of these facts, but that they must be realistic. "When confronted by armed agression," they ask, "how else can we respond?" My questions: What measures could we have taken to alleviate the "social problem" peacefully? To what degree are we economically and socially committed to "look for" agression? To what extent

do we thus <u>depend</u> on it?

I cannot fully account for my decision intellectually.

"What we cannot speak about we must pass over in silence." 12

Sincerely,

Elliott A Wicks

NOTES

1. Webster's New Collegiate Dictionary, Sixth Edition, page 853.

2. Since that time I have found the standard notion of God defined fairly well in Webster's Third New International Dictionary, Unabridged.

> "the holy, infinite, and eternal spiritual reality presented in the Bible as the creator, sustainer, judge, righteous soverign, and redeemer of the universe..."

3. I do not intend to be facetious here; I am truly puzzled by the meaning of the law as the "religious training and belief" clause modifies it. Just what does "Supreme Being" mean? If only those who believe in a "Supreme Being" can be classified conscientious objectors, what of those who profess no such belief, but who are "conscientiously opposed to participation in war in any form"?

4. I use the word advisedly. The Board members apparently had not read my letter of appeal prior to my appearance before them. They indicated that they had no questions to address to me concerning my claim as entered. The proceeding was treated perfunctorily; the Board's abdication of decision in my case is apparently a matter of policy, I later learned. So the "hearing" was not that at all; it was merely a formality. No consideration was taken of the appeal per se. If the hearing was meant to be a means of

NOTES CONTINUED

obtaining administrative review, it did not fulfill its purpose.

5. Were I not granted relief under Title I, sec. 6(j), of the Universal Military Training and Service Act, as Amended, I would be required to enter the service of the Government of the United States, which service involves not only the performance of duties which are onerous, but worse, the implied profession of commitment to the military ethic. I would not so much mind the cleaning of latrines per se; what I would object to is the fact that I am cleaning latrines in support of an institution which has become, quite simply, less than useful to the conduct of human affairs. I am afraid reason has already subverted my commitment to the military ethic.

6. "The function of the profession of arms is the ordered application of force to the resolution of a social problem."

Lieutenant General Sir John Winthrop Hackett, The Profession of Arms, page 3, The Times Publishing Co., London, 1963. Doesn't he mean "elimination of the social problem"? If those who are causing a "social problem" are prevented from acting by means of force, the social problem is not resolved, really, it is either suspended or eliminated.

NOTES CONTINUED

7. Ordered application of force to the resolution of a social problem: George F. Kennan on World War I:

> "History reveals that every one of the warring powers would have been better off to have concluded peace in the early stages of the war on the adversary's terms rather than to accept the loss of life attendant on continuation of the war to 1918. This loss inflicted on each of the belligerents a subjective damage from which it could not recover, even superficially, for at least a generation. In a deeper sense, some may be said to have not fully recovered to the present day."

Emphasis in the original. "The Price We Paid for War," The Atlantic, Oct., 1964.

8. "the sense of right or wrong within the individual; the awareness of the moral goodness or blameworthyness of one's own conduct, intentions, or character together with a feeling of obligation to do or be that which is recognized as good ofter felt to be instrumental in producing feelings of guilt or remorse for ill-doing; specif: the part of the superego in psychoanalysis of which the ego is conscious and through which the commands and admonitions of the superego are communicated to the ego."

Webster's Third New International Dictionary, page 482.

9. "...the good is an indefinable, indescribable, unverbalizable essence of some sort. He says, well, it's like yellow, like my awareness of yellow

NOTES CONTINUED

here on this paper.....That the perception of good is like the perception of yellow. When you try to put it into words, when you don't have a commandment from God or from habitual upbringing, and you don't really distinguish what's useful for your nation from what's honorable, goodness becomes empty, almost nothing. But when you think of the good as like yellow, like the yellow of the paper that's in front of us right now, just like that, you encounter it, it's yellow, it's indescribable, it's indefinable, not because it's so abstract, but because it's so concrete. And this is really the inadvertent point of G. E. Moore's great work on ethics, that the good is really not to be found in the useful, but rather in our own personal confrontaion with something that's cockeyed wrong, or horribly bad, or something that's pretty right and O.K. ....If you have to talk about morality, you're doing it off the top of your brain, and this is not the way you make moral decisions. You make them by confronting the facts in the case, the way you confront the yellow on this paper. And when all the facts are there, you simply see whether it's good or not good to do something."

P. P. Hallie, A Symposium on Morality, The American Scholar, Summer 1965, page 352-353.

10. "6.4 All propositions are of equal value.

6.41 The sense of the world must lie outside the world. In the world everything is as it is, and everything happens as it does happen: in it no value exists--and if it did exist, it would have no value.
If there is any value that does have

NOTES CONTINUED

value, it must lie outside the whole sphere of what happens and is the case. For all that happens and is the case is accidental.

What makes it non-accidental cannot lie within the world, since if it did it would itself be accidental.

It must lie outside the world.

6.42 And so it is impossible for there to be propositions of ethics.

Propositions can express nothing that is higher.

6.421 It is clear that ethics cannot be put into words.

Ethics is transcendental.

(Ethics and aesthetics are one and the same.)

6.422 When an ethical law of the form, 'Thou shalt...', is laid down, one's first thought is, 'And what if I do not do it?' It is clear, however, that ethics has nothing to do with punishment and reward in the usual sense of the terms. So our question about the consequences of an action must be unimportant.--At least those consequences should not be events. For there must be something right about the question we posed. There must indeed be some kind of ethical reward and ethical punishment, but they must reside in the action itself.

(And it is also clear that the reward must be something pleasant and the punishment something unpleasant.)

6.423 It is impossible to speak about the will in so far as it is the subject of ethical attributes.

And the will as a phenomenon is of interest only to psychology.

6.43 If the good or bad exercise of the will does alter the world, it can alter

NOTES CONTINUED

> only the limits of the world, not the facts--not what can be expressed by means of language.
>
> In short the effect must be that it becomes an altogether different world. It must, so to speak, wax and wane as a whole.
>
> The world of the happy man is a different one from that of the unhappy man."

Ludwig Wittgenstein, Logisch-philosophische Abhandlung, Routledge & Kegan Paul, London, 1963, page 145. Translated by D. F. Pears and B. F. McGuinness.

11. or reactions

12. Ludwig Wittgenstein, op cit.

Elliott A. Welsh II
441 Sherman Canal
Venice, California

October 13, 1965

Chairman, Appeal Board,
Southern California,
Panel No. 3
Selective Service System
Room 206 Bendix Building
1206 Maple Avenue
Los Angeles 15, California

Dear Sir:

I would like to comment upon and correct several statements found in the Letter of the Attorney General which describes the inquiry made by the Department of Justice into my claim for exemption as a Conscientious Objector.

I. "He qualified his regular attendance at Sunday school and church by stating that his mother made him attend and that he never got anything out of it."

Letter, page 2.

If I used the words, "I never got anything out of it," I intended to mean, "I never became a Christian Scientist. (Which, of course, was presumably the point of attending that particular Sunday school.)" It would be unreasonable to contend, and I certainly do not mean to imply, that the religious training I received there had nothing to do with the ethical or moral values I live by.

II. "He said that he had engaged in a peace march sponsored by the Committee for Non-Violent Action-West in the summer of 1961, when a number marched from San Diego north to Vallejo, California, and he participated in the march from Port Hueneme to Carperteria, a distance of ten or fifteen miles, and that he had demonstrated at Vandenberg Air Force Base."

Letter, page 2.

I did not participate in the march from Port Hueneme to Carpenteria; rather, I visited the march in both places (I was not at the time a pacifist, holding, in fact, views antagonistic to pacifism.) since I had become interested in what the marchers had to say.

III. "...He (the registrant) believes in the 'natural law' as a force outside of man but the force as such is not an entity, and he seemed unable to explain further what he meant by the 'force'."
Letter, page 3

I believe Mr. Bradley confused the term "natural law" as I used it with Natural Law as the term is used in philosophy and law. Mr. Bradley insisted upon describing what I called "natural law" as a "force", whereas I simply meant "natural law" to be taken as "the laws of nature". The laws of nature are "outside", or beyond the control of men, but it is to perpetrate a semantic absurdity to characterize either "natural law" or "force" as an "entity", and in trying to avoid doing so I may have caused Mr. Bradley to misunderstand me.

At this point it might be well to comment upon the manner and substance of the inquiry. It might seem as if I had ample opportunity to correct any misconceptions in Mr. Bradley's mind during the course of a face to face encounter, but this was not so (especially concerning that portion of the interview dealing with birth control, which I shall mention later). Nominally, the inquiry was made to determine whether or not I am a Conscientious Objector. It is apparently the Justice Department's idea that one can learn whether or not a person is a Conscientious Objector by asking him a number of set questions of the type: "...what would you do if attacked by a man with a club? Would you attempt to stop him with

physical force? Do you think a country is justified in protecting itself?" and the like. The kinds of questions asked, and the kinds of answers expected suggests a rather limited preconception of what a Conscientious Objector is, and the nature of Conscientious Objection. Obviously, the reasons for the limited definition of the term "Conscientious Objector" are too complex to go into here, but I would not think it too presumptious to suggest that a more flexible approach be used; that the Hearing Officer spend his time "getting to know" the subject of the inquiry, trying to understand what he has to say about his objection, rather than trying to determine his belief or non-belief in a "Supreme Being", with the implied presupposition that the subject is insincere. The reason I left Mr. Bradley with a somewhat distorted, and certainly incomplete, knowledge of me and my beliefs is that there was no "feedback", no way of knowing whether or not he did actually understand me, or whether he understood me only in terms of the Justice Department's idea of what a Conscientious Objector is. supposed to be.

I almost hesitate to add that I feel quite strongly that it is not any business of the Government whether or not I believe in a "Supreme Being" (which the Government "seems unable to explain" the meaning of). Surely the Board, the Justice Department, the FBI, et. al. understand the meaning of the term "conscientious objector":

> "One who, for conscience' sake, objects to warfare or to military service."
>
> --Webster's New Collegiate Dictionary, Second Ed.

IV. "...ethics are implicit within us governing the conduct of individuals, which he refused to relate to the questions of guilt, punishment or reward, and he does not believe in a life after death or in a life of what might be called a human soul."

Letter, page 3

I don't believe I was asked to relate the fact that "ethics are implicit within us" to the "questions of guilt, punishment or reward". And is "guilt" a question? Is "punishment or reward" a question? I, frankly, do not understand how it can be so. The Justice Department's rendering, "ethics are implicit within us," might be expressed better as, "that we do, in fact, choose, as individuals, a system of ethics, a set of ethics or ethical values, or perhaps no ethics. The point being that ethics, as a set of rules or modes of behavior 'governing the conduct of individuals', arises as a result of human interaction and experience and that religious beliefs are ethical but that not all ethical beliefs are religious." Which is not as concise, but certainly more meaningful. In other words, ethics is a cultural phenomenon, even as religion is a cultural phenomenon. I should have added perhaps, that I believe both ethical and religious values usually arise from the same source: the individual's concern for other individuals. Although it is possible to imagine a solitary individual who behaves as a practicing Christian, the value of Christianity (or Confucianism, or Buddhism, for that matter) is better seen in a community, where belief is expressed as each individual's concern for the rest. This concern, it seems to me, is implicit in all religious belief, even the most primitive, where, though its expression seems sometimes to be bizzare, it still acts to govern peoples' relationships, one to another.

This, I suppose, is the crux of my problem of explaining my beliefs in religious terms. Perhaps I erred in taking such pains to point out that I do not believe in the "standard notion" of God. I think my beliefs could be considered religious, in the sense I have just explained. I do not call myself religious, simply because most people then assume that I believe in God, in the conventional sense.

V. "He said he believed in birth control but was uncertain whether birth control meant taking life; that he believed in preventive birth control and not in the interruption of gestation 'if it can be helped'."

Letter, page 3

Both my attorney and I were rather surprised by the questions Mr. Bradley asked me concerning my beliefs in connection with birth control. I was not exactly "uncertain" whether birth control meant taking life; I simply did not know what Mr. Bradley meant by "life". If he meant it in the legal sense, then interruption of gestation means "taking life," I suppose. If he meant it in the moral sense; whether or not it is "right" or "good" is a different matter. This question is considered by some people, and I am one of them, to admit no simple answer. Since my beliefs concerning birth control seem quite irrelevant to the questions at hand, I would rather not go into them here.

VI. "The registrant stated that there should be no armies, even for defense or resistance to aggression, and even if another political force should take over the country."

Letter, page 3

Here, again, I don't quite understand the Justice Department. When it speaks of another political "force" taking over the country, does it mean the Republicans?

I presume that, when the Justice Department says "another political force", it means, "an enemy".

Again, perhaps, I did not make myself clear. When Mr. Bradley heard me say there should be no armies (and I say there should be no armies in exactly the same way that I would say that there should be no disease: I think we all can agree that things would be better if we could live without armies, just as we can agree that things would be better if none of us had to worry about cancer--and neither of these desirable circumstances will come of its own accord.), he assumed immediately that I meant "there sould be no armies, even for defense or resistance to aggression..." (my stress). What I may not have made clear, perhaps, is that the sentence should read, "there should be no armies, because they do not constitute a vital defense, nor do they provide a permanent means of resisting aggression." You disagree. Naturally. But the point is not whether or not I am right; this we shall all learn in time. The point is that I am being asked (and "asked" is certainly not too strong a word) by my Government to join its army. If I disagree with my Government about whether or not a bridge should be built, or a school planned, or taxes raised, I can complain, vote, write letters to my Congressman--in short I can oppose what the Government is doing, and I am free to do so. If my opposition is unsuccessful I may even have to pay for the things I opposed. This is reasonable and it works fairly equitably in practice. The Government can take my money and use it in a way with which I disagree. But, in this case, the Government not only wants to take my money, it wants to take me, and use me in a way with which I profoundly disagree. And, it not

only wants to use me, but it wants me to agree to the bargain. Well I'm not really complaining, Gentlemen. I realize that the Government position seems reasonable. The Government needs people for its army and so it institutes some sort of procedure for getting them. And, in order to make things equitable, everybody is liable to be taken. I might even consider going to work for the Government, voluntarily, if I were convinced I was Helping to make a better world. But, though the Government is, I believe, trying to improve life for us, in whatever ways Governments can improve life for people, I feel that I would be betraying my concern for others--that I would be betraying myself if I were to allow the Government to use me in its army.

It is not an easy thing to say "No; I won't go," when others are going--and some are dying. It may seem strange to say, but I would be betraying them, too, if I agreed to let my Government use me. I, too, want to see a peaceful world. But armed "defense" will not create that world. People will create that world if it is to be created at all. If we kill in the cause of peace, we may gain peace, eventually, but will we be around to enjoy it?

VII. "He reiterated that he did not believe in taking a human life but that he did not see it as a moral or religious wrong but simply as a social 'error' or illogical act."

I believe I mentioned taking of life as not being, for me, a religious wrong. Again, I assumed Mr. Bradley was using the word "religious" in the conventional sense, and, in order to be perfectly honest did not characterize my belief as "religious." I do believe the taking of life--anyone's life--to be morally wrong. It is not anyone's business to take anyone's life.

I do not believe I could ever find myself in circumstances where I could take anyone's life.

To summarize, I would like to reiterate that, though my beliefs are not religious in the conventional sense of my deriving the authority for such beliefs from a belief in God, they are certainly religious in the ethical sense of the word; that, though I don't believe the "force" outside of man is an entity, I do certainly believe in a force beyond man's control, the "force of circumstance," if you will. In addition, I would like to ask you about my "burden of proof," mentioned in the Letter of the Attorney General. I seem to be having a difficult time proving that I am what I am, at least in the eyes of the Justice Department. Proving that one believes as one believes seems a somewhat arduous task and I would appreciate it, therefore, if the Chairman of the Appeal Board could furnish me with some sort of outline or guide to the nature of this proof. I am not trying to make fun of the Board; I would simply, like to know how best to make my concern as a Conscientious Objector known to you. Other than describing myself and my beliefs as best I can, I can, at this time, offer no more.

Thank you for your consideration.

Sincerely,

4-05-41-730

Manufacturers of
THE NEW WRIGHT ELECTRO-LARYNX

KETT ENGINEERING CORPORATION

12-8

CONSULTING ENGINEERS

Telephones
EXBROOK 3-9714
UPTON 0-8255

920 SANTA MONICA BOULEVARD
SANTA MONICA, CALIFORNIA

29 November 1965

SELECTIVE SERVICE SYSTEM
Local Board Group "C"
NOV 30 1965
1301 Westwood Blvd.

SPECIAL DELIVERY

Selective Service System
Local Board # 95
1301 Westwood Blvd.
Los Angeles, California 90024

Subj: Request for postponement of induction of Elliot Welsh

Mr. Welsh has been employed by Kett Engineering Corporation since September 1965 as a Mathematician and a Scientific Computer Programmer.

His specific assignment involves the entire responsibility for the scientific programming of a computer which is utilized as a turbojet engine analyser of several military aircraft which are being utilized in Viet-Nam at this time.

He is making full utilization of his college training plus his specialized training in scientific computer programming which he received at the International Tabulating Institute. Because he has had sole responsibility for this vital project, it is imperative that he be permitted to continue until the project is completed. This will take a minimum of 120 days from this date.

It is completely impractical to replace him within any reasonable period of time even if a technically competent substitute could be found because he has been handling the entire phase of the project. Any attempt to replace him would of necessity cause a delay in the successful completion of this project, which is directly related to the conflict in Viet-Nam.

Due to the urgency of this situation, please contact us by phone at EX 3-9714 or at 920 Santa Monica Blvd., Santa Monica, California so that we can notify the military contracting officer of the results of this request.

Cliff Petersen
President & Security Officer

KETT ENGINEERING CORPORATION

cc: Air Force Contract Administrator

12/1/65
Denied
Mr Marshall
Mr. Gaskow

ARMED FORCES SECURITY QUESTIONNAIRE

I.—EXPLANATION

1. The interests of National Security require that all persons being considered for membership or retention in the Armed Forces be reliable, trustworthy, of good character, and of complete and unswerving loyalty to the United States. Accordingly, it is necessary for you to furnish information concerning your security qualifications. The answers which you give will be used in determining whether you are eligible for membership in the Armed Forces, in selection of your duty assignment, and for such other action as may be appropriate.

2. You are advised that in accordance with the Fifth Amendment of the Constitution of the United States you cannot be compelled to furnish any statements which you may reasonably believe may lead to your prosecution for a crime. This is the only reason for which you may avail yourself of the privilege afforded by the Fifth Amendment in refusing to answer questions under Part IV below. Claiming the Fifth Amendment will not by itself constitute sufficient grounds to exempt you from military service for reasons of security. You are not required to answer any questions in this questionnaire, the answer to which might be incriminating. If you do claim the privilege granted by the Fifth Amendment in refusing to answer any question, you should make a statement to that effect after the question involved.

II.—ORGANIZATIONS OF SECURITY SIGNIFICANCE

1. There is set forth below a list of names of organizations, groups, and movements, reported by the Attorney General of the United States as having significance in connection with the National Security. Please examine the list carefully, and note those organizations, and organizations of similar names, with which you are familiar. Then answer the questions set forth in Part IV below.

2. Your statement concerning membership or other association with one or more of the organizations named may not, of itself, cause you to be ineligible for acceptance or retention in the Armed Forces. Your age at the time of such association, circumstances prompting it, and the extent and frequency of involvement, are all highly pertinent, and will be fully weighed. Set forth all such factors under "Remarks" below, and continue on separate attached sheets of paper if necessary.

3. If there is any doubt in your mind as to whether your name has been linked with one of the organizations named, or as to whether a particular association is "worth mentioning," make a full explanation under "Remarks."

Organizations designated by the Attorney General, pursuant to Executive Order 10450, are listed below:

Communist Party, U. S. A., its subdivisions, subsidiaries and affiliates.

Communist Political Association, its subdivisions, subsidiaries and affiliates, including—

Alabama People's Educational Association.
Florida Press and Educational League.
Oklahoma League for Political Education.
People's Educational and Press Association of Texas.
Virginia League for People's Education.

Young Communist League.

Abraham Lincoln Brigade.
Abraham Lincoln School, Chicago, Illinois.
Action Committee to Free Spain Now.
American Association for Reconstruction in Yugoslavia, Inc.
American Branch of the Federation of Greek Maritime Unions.
American Christian Nationalist Party.
American Committee for European Workers' Relief.
American Committee for Protection of Foreign Born.
American Committee for the Settlement of Jews in Birobidjan, Inc.
American Committee for Spanish Freedom.
American Committee for Yugoslav Relief, Inc.
American Committee to Survey Labor Conditions in Europe.
American Council for a Democratic Greece, formerly known as the Greek American Council; Greek American Committee for National Unity.
American Council on Soviet Relations.
American Croatian Congress.
American Jewish Labor Council.
American League Against War and Fascism.
American League for Peace and Democracy.
American National Labor Party.
American National Socialist League.
American National Socialist Party.
American Nationalist Party.
American Patriots, Inc.
American Peace Crusade.
American Peace Mobilization.
American Poles for Peace.
American Polish Labor Council.
American Polish League.
American Rescue Ship Mission *(a project of the United American Spanish Aid Committee)*.
American-Russian Fraternal Society.
American-Russian Institute, New York *(also known as the American Russian Institute for Cultural Relations with the Soviet Union)*.
American Russian Institute, Philadelphia.
American Russian Institute of San Francisco.
American Russian Institute of Southern California, Los Angeles.
American Slav Congress.
American Women for Peace.
American Youth Congress.
American Youth for Democracy.
Armenian Progressive League of America.
Associated Klans of America.
Association of Georgia Klans.
Association of German Nationals *(Reichsdeutsche Vereinigung)*.
Ausland-Organization der NSDAP, Overseas Branch of Nazi Party.
Baltimore Forum.
Benjamin Davis Freedom Committee.
Black Dragon Society.
Boston School for Marxist Studies, Boston, Massachusetts.
Bridges-Robertson-Schmidt Defense Committee.
Bulgarian American People's League of the United States of America.
California Emergency Defense Committee.
California Labor School, Inc., 321 Divisadero Street, San Francisco, California.
Carpatho-Russian People's Society.
Central Council of American Women of Croatian Descent *(also known as Central Council of American Croatian Women, National Council of Croatian Women)*.
Central Japanese Association *(Beiboku Chuo Nippon-jin Kai)*.
Central Japanese Association of Southern California.
Central Organization of the German-American National Alliance *(Deutsche-Amerikanische Einheitsfront)*.
Cervantes Fraternal Society.
China Welfare Appeal, Inc.
Chopin Cultural Center.
Citizens Committee to Free Earl Browder.
Citizens Committee for Harry Bridges.
Citizens Committee of the Upper West Side *(New York City)*.
Citizens Emergency Defense Conference.
Citizens Protective League.
Civil Liberties Sponsoring Committee of Pittsburgh.
Civil Rights Congress and its affiliated organizations, including Civil Rights Congress for Texas Veterans Against Discrimination of Civil Rights Congress of New York.
Columbians.
Comite Coordinador Pro Republica Espanola.
Comite Pro Derechos Civiles.
Committee to Abolish Discrimination in Maryland.
Committee to Aid the Fighting South.
Committee to Defend the Rights and Freedom of Pittsburgh's Political Prisoners.
Committee for a Democratic Far Eastern Policy.
Committee for Constitutional and Political Freedom.
Committee for the Defense of the Pittsburgh Six.
Committee for Nationalist Action.
Committee for the Negro in the Arts.
Committee for Peace and Brotherhood Festival in Philadelphia.
Committee for the Protection of the Bill of Rights.
Committee for World Youth Friendship and Cultural Exchange.
Committee to Defend Marie Richardson.
Committee to Uphold the Bill of Rights.
Commonwealth College, Mena, Arkansas.
Congress Against Discrimination.
Congress of the Unemployed.
Connecticut Committee to Aid Victims of the Smith Act.
Connecticut State Youth Conference.
Congress of American Revolutionary Writers.
Congress of American Women.
Council on African Affairs.
Council of Greek Americans.
Council for Jobs, Relief, and Housing.
Council for Pan-American Democracy.
Croatian Benevolent Fraternity.
Dai Nippon Butoku Kai *(Military Virtue Society of Japan or Military Art Society of Japan)*.
Daily Worker Press Club.
Daniels Defense Committee.
Dante Alighieri Society *(Between 1935 and 1940)*.
Dennis Defense Committee.
Detroit Youth Assembly.
East Bay Peace Committee.
Elsinore Progressive League.
Emergency Conference to Save Spanish Refugees *(founding body of the North American Spanish Aid Committee)*.
Everybody's Committee to Outlaw War.
Families of the Baltimore Smith Act Victims.
Families of the Smith Act Victims.
Federation of Italian War Veterans in the U. S. A., Inc. *(Associazione Nazionale Combattenti Italiani, Federazione degli Stati Uniti d' America)*.
Finnish-American Mutual Aid Society.
Florida Press and Educational League.
Frederick Douglass Educational Center.
Freedom Stage, Inc.
Friends of the New Germany *(Freunde des Neuen Deutschlands)*.
Friends of the Soviet Union.
Garibaldi American Fraternal Society.
George Washington Carver School, New York City.
German-American Bund *(Amerikadeutscher Volksbund)*.

German-American Republican League.
German-American Vocational League (*Deutsche Amerikanische Berufsgemeinschaft*)
Guardian Club.

Harlem Trade Union Council.
Hawaii Civil Liberties Committee.
Heimuska Kai, also known as Nokubei Heiseki, Gumusha Kai, Zaibei Nihonjin, Heiseki Gumusha Kai and Zaibei Heimusha Kai (*Japanese Residing in America Military Concepts Association*)
Hellenic-American Brotherhood.
Higaide Kai (*Imperial Japanese Reservists*)
Hinomaru Kai (*Rising Sun Flag Society—a group of Japanese War Veterans*).
Hokubei Zaigo Shoke Dan (*North American Reserve Officers Association*)
Hollywood Writers Mobilization for Defense.
Hungarian-American Council for Democracy.
Hungarian Brotherhood.

Idaho Pension Union.
Independent Party (*Seattle, Washington*)
Independent People's Party.
Industrial Workers of the World.
International Labor Defense.
International Workers Order, its subdivisions, subsidiaries and affiliates.

Japanese Association of America.
Japanese Overseas Central Society (*Kaigai Doho Chuo Kai*).
Japanese Overseas Convension, Tokyo, Japan, 1940.
Japanese Protective Association (*Recruiting Organization*)
Jefferson School of Social Science, New York City.
Jewish Culture Society.
Jewish People's Committee.
Jewish People's Fraternal Order.
Jikyoku Iin Kai (*The Committee for the Crisis*)
Johnson-Forest Group.
Johnsonites.
Joint Anti-Fascist Refugee Committee.
Joint Council of Progressive Italian-Americans, Inc.
Joseph Weydemeyer School of Social Science, St. Louis, Missouri.

Kibei Seinen Kai (*Association of U. S. citizens of Japanese ancestry who have returned to America after studying in Japan*)
Knights of the White Camelia.
Ku Klux Klan.
Kyffhauser, also known as Kyffhauser League (*Kyffhauser Bund*), Kyffhauser Fellowship (*Kyffhauser Kameradschaft*).
Kyffhauser War Relief (*Kyffhauser Kriegshilfswerk*)

Labor Council for Negro Rights.
Labor Research Association, Inc.
Labor Youth League.
League for Common Sense.
League of American Writers.
Lictor Society (*Italian Black Shirts*)

Macedonian-American People's League.
Mario Morgantini Circle.
Maritime Labor Committee to Defend Al Lannon.
Maryland Congress Against Discrimination.
Massachusetts Committee for the Bill of Rights.
Massachusetts Minute Women for Peace (not connected with the Minute Women of the U. S. A., Inc.).
Maurice Braverman Defense Committee.
Michigan Civil Rights Federation.
Michigan Council for Peace.
Michigan School of Social Science.
Nanka Teikoku Gunyudan (*Imperial Military Friends Group or Southern California War Veterans*)
National Association of Mexican Americans (*also known as Asociacion Nacional Mexico-Americana*)
National Blue Star Mothers of America (not to be confused with the Blue Star Mothers of America organized in February 1942).
National Committee for the Defense of Political Prisoners.
National Committee for Freedom of the Press.
National Committee to Win Amnesty for Smith Act Victims.
National Committee to Win the Peace.
National Conference on American Policy in China and the Far East (*a Conference called by the Committee for a Democratic Far Eastern Policy*).
National Council of Americans of Croatian Descent.
National Council of American-Soviet Friendship.
National Federation for Constitutional Liberties.
National Labor Conference for Peace.
National Negro Congress.
National Negro Labor Council.
Nationalist Action League.
Nationalist Party of Puerto Rico.
Nature Friends of America (*Since 1935*)
Negro Labor Victory Committee.
New Committee for Publications.
Nichibei Kogyo Kaisha (*The Great Fuji Theatre*)
North American Committee to Aid Spanish Democracy.
North American Spanish Aid Committee.
North Philadelphia Forum.
Northwest Japanese Association.

Ohio School of Social Sciences.
Oklahoma Committee to Defend Political Prisoners.
Oklahoma League for Political Education.
Original Southern Klans, Incorporated.

Pacific Northwest Labor School, Seattle, Washington.
Palo Alto Peace Club.
Partido del Pueblo of Panama (*operating in the Canal Zone*).
Peace Information Center.
Peace Movement of Ethiopia.
People's Drama, Inc.
People's Educational and Press Association of Texas.
People's Educational Association (*Incorporated under name Los Angeles Educational Association, Inc.*), also known as People's Educational Center, People's University, People's School.
People's Institute of Applied Religion.
Peoples Programs (*Seattle, Washington*).
People's Radio Foundation, Inc.
People's Rights Party.
Philadelphia Labor Committee for Negro Rights.
Philadelphia School of Social Science and Art.
Photo League (*New York City*).
Pittsburgh Arts Club.
Political Prisoners' Welfare Committee.
Polonia Society of the IWO.
Progressive German-Americans, also known as Progressive German-Americans of Chicago.
Proletarian Party of America.
Protestant War Veterans of the United States, Inc.
Provisional Committee of Citizens for Peace, Southwest Area.
Provisional Committee on Latin American Affairs.
Provisional Committee to Abolish Discrimination in the State of Maryland.
Puerto Rican Comite Pro Libertades Civiles (CLC).
Puertorriquenos Unidos (*Puerto Ricans United*).

Quad City Committee for Peace.
Queensbridge Tenants League.

Revolutionary Workers League.
Romanian-American Fraternal Society.
Russian American Society, Inc.

Sakura Kai (*Patriotic Society, or Cherry Association, composed of veterans of Russo-Japanese War*)
Samuel Adams School, Boston, Mass.
Santa Barbara Peace Forum.
Schappes Defense Committee.
Schneiderman-Darcy Defense Committee.
School of Jewish Studies, New York City.
Seattle Labor School, Seattle, Washington.
Serbian-American Fraternal Society.
Serbian Vidovdan Council.
Shinto Temples (Limited to State Shinto abolished in 1945).
Silver Shirt Legion of America.
Slavic Council of Southern California.
Slovak Workers Society.
Slovenian-American National Council.
Socialist Workers Party, including American Committee for European Workers Relief.
Sokoku Kai (*Fatherland Society*).
Southern Negro Youth Congress.
Suiko Sha (*Reserve Officers Association, Los Angeles*).
Syracuse Women for Peace.

Tom Paine School of Social Science, Philadelphia, Pennsylvania.
Tom Paine School of Westchester, New York.
Trade Union Committee for Peace.
Trade Unionists for Peace.
Tri-State Negro Trade Union Council.

Ukranian-American Fraternal Union.
Union of American Croatians.
Union of New York Veterans.
United American Spanish Aid Committee.
United Committee of Jewish Societies and Landsmanschaft Federations, also known as Coordination Committee of Jewish Landsmanschaften and Fraternal Organizations.
United Committee of South Slavic Americans.
United Defense Council of Southern California.
United Harlem Tenants and Consumers Organization.
United May Day Committee.
United Negro and Allied Veterans of America.

Veterans Against Discrimination of Civil Rights Congress of New York.
Veterans of the Abraham Lincoln Brigade.
Virginia League for People's Education.
Voice of Freedom Committee.

Walt Whitman School of Social Science, Newark, New Jersey.
Washington Bookshop Association.
Washington Committee to Defend the Bill of Rights.
Washington Committee for Democratic Action.
Washington Commonwealth Federation.
Washington Pension Union.
Wisconsin Conference on Social Legislation.
Workers Alliance (*since April 1936*)

Yiddisher Kultur Farband.
Yugoslav-American Cooperative Home, Inc.
Yugoslav Seamen's Club, Inc.

III.—INSTRUCTIONS

1. Set forth an explanation for each answer checked "Yes" under question 2 below under "Remarks." Attach as many extra sheets as necessary for a full explanation, signing or initialing each extra sheet.

2. Title 18, U. S. Code, Section 1001, provides, in pertinent part: "Whoever . . . falsifies, conceals or covers up . . . a material fact, or makes any false . . . statements . . . or makes or uses any false writing . . . shall be fined not more than $10,000 or imprisoned not more than 5 years, or both." Any false, fraudulent or fictitious response to the questions under Part IV below may give rise to criminal liability under Title 18, U. S. C., Section 1001. You are advised, however, that you will not incur such liability unless you supply inaccurate statements with knowledge of their untruthfulness. You are therefore advised that before you sign this form and turn it in to Selective Service or military authorities, you should be sure that it is truthful, that detailed explanations are given for each "Yes" answer under question 2 of Part IV below, and that details given are as full and complete as you can make them.

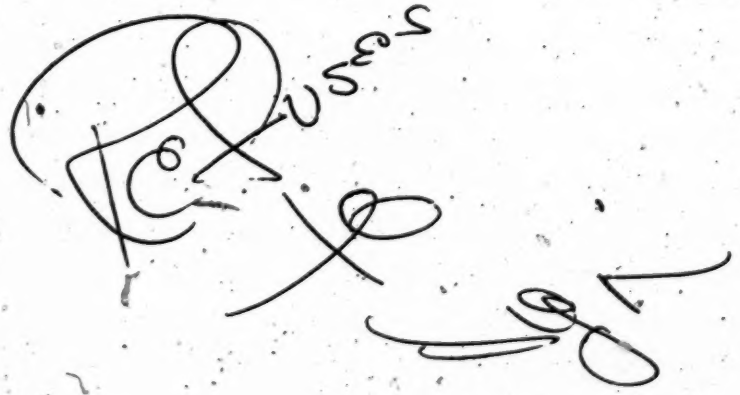
3. In stating details, it is permissible, if your memory is hazy on particular points, to use such expressions as, "I think," "in my opinion," "I believe," or "to the best of my recollection."

IV.—QUESTIONS

(For each answer checked "Yes" under question 2, set forth a full explanation under "Remarks" below)

	YES	NO
1. I have read the list of names of organizations, groups, and movements set forth under Part II of this form and the explanation which precedes it.	YES	
2. Concerning the list of organizations, groups and movements set forth under Part II above:		
a. Are you now a member of any of the organizations, groups, or movements listed?		NO
b. Have you ever been a member of any of the organizations, groups, or movements listed?		NO
c. Are you now employed by any of the organizations, groups, or movements listed?		NO
d. Have you ever been employed by any of the organizations, groups, or movements listed?		NO
e. Have you ever attended any meeting of any of the organizations, groups, or movements listed?		NO
f. Have you ever attended any social gathering of any of the organizations, groups, or movements listed?		NO
g. Have you ever attended any gathering of any kind sponsored by any of the organizations, groups, or movements listed?		NO
h. Have you prepared material for publication by any of the organizations, groups, or movements listed?		NO
i. Have you ever corresponded with any of the organizations, groups, or movements listed or with any publication thereof?		NO
j. Have you ever contributed money to any of the organizations, groups, or movements listed?		NO
k. Have you ever contributed services to any of the organizations, groups, or movements listed?		NO
l. Have you ever subscribed to any publication of any of the organizations, groups, or movements listed?		NO
m. Have you ever been employed by a foreign government or any agency thereof?		NO
n. Are you now a member of the Communist Party of any foreign country?		NO
o. Have you ever been a member of the Communist Party of any foreign country?		NO
p. Have you ever been the subject of a loyalty or security hearing?		NO
q. Are you now or have you ever been a member of any organization, association, movement, group or combination of persons list on the Attorney General's list which advocates the overthrow of our constitutional form of government, or which has adopted the policy of advocating or approving the commission of acts of force or violence to deny other persons their rights under the Constitution of the United States, or which seeks to alter the form of government of the United States by unconstitutional means?		NO
r. Have you ever been known by any other last name than that used in signing this questionnaire?		NO

REMARKS



REMARKS (Continued):

I have this date, 8 DEC 65, reviewed the contents of DD Form 98 prepared by myself on 30 APR 64 and certify that the statements then made by me are at this time full, true, and correct.

Signature of Witnessing Officer

Signature

CERTIFICATION

In regard to any part of this questionnaire concerning which I have had any question as to the meaning, I have requested and have obtained a complete explanation. I certify that the statements made by me under Part IV above and on any supplemental pages hereto attached, are full, true, and correct.

TYPED FULL NAME OF PERSON MAKING CERTIFICATION	SERVICE NUMBER (If any)	SIGNATURE OF PERSON MAKING CERTIFICATION
		Edward Austin Walker III
TYPED NAME OF WITNESS	**DATE**	**SIGNATURE OF WITNESS**
A. EPPLEY, Capt, USMC Deputy CO, Exam & Ind Station	30 APR 1964	

U.S. GOVERNMENT PRINTING OFFICE 1961

"religion".

Registrant states that he is absolutely opposed to the use of force in human affairs.

CONCLUSION

The hearing officer believes that this young man is sincere in his convictions as expressed to the hearing officer. However, his ideas are somewhat incomplete. In other words, as registrant admits, his ideas are still in the process of formulation. In addition to the questions on euthanasia and birth control, his ideas of when and under what circumstances force could be used (for example the question of a policeman apprehending a criminal) were not well explained or made clear. He reiterated faithfully that he does not believe in the taking of human life. But he does not see this as a moral or religious wrong but simply as a social "error" or as an act which is illogical. He does not believe in any continuation of human existence after death, he does not believe in a God or in any other being or entity outside of man which has any authority over men. He does not believe in any system of ethics or in a set of prescribed rules of human conduct except to the extent that he feels some things are "right" and some things are "wrong" such as killing, stealing, adultery and the like. But his authority for these beliefs is that they are "laws of being" which are tantamount to a conscience in each individual. But registrant denies any religious beliefs or authority for these thoughts.

The hearing officer could find no religious basis for the registrant's beliefs, opinions and convictions. Under these circumstances it is believed that registrant does not come within the provisions of Section 6(j) of the Act.

RECOMMENDATION

The hearing officer considers that it would be appropriate for the Department of Justice to recommend to the Appeal Board that the registrant's claim for exemption should be denied both as to combatant and non-combatant service.

Dated this 15th day of July, 1965.

Owen J. Brady
Special Hearing Officer

TRIAL TESTIMONY OF PETITIONER

Q. Recite to us what happened just before you announced that you were not going to submit to induction?

A. Well, we were in a large room filling out forms at a table, a number of tables, and there were two army people there. I don't know what their ranks were. They weren't wearing anything on their shoulders, and they were having everyone fill out insurance forms and what have you I believe.

We weren't given time to read the forms. We came to a form that I didn't sign, couldn't sign, because he's asking me to sign—they were asking me to sign something I didn't feel I could sign, and I raised my hand to indicate that I had a question about this form, and the gentleman

asked me to step around to a corner of the room and talk to another gentleman who asked me what was the matter, and I told him that I couldn't sign the form because there's some things that had changed.

And he said to me, "Well, are you going to refuse induction," and I said, "Yes."

And he said, "Well, do you want to be a fucking murderer about it." And I said, "No." And then he said, "Well, stand over in the next room and wait."

And so I stood over in the next room and waited for I imagine forty-five minutes or so. Meanwhile there were several other officers coming and going and they were evidently trying to decide what to do with me.

At least a Marine Captain, I believe his name was DeLano, came in and took me up to an office. I believe it's on the second or third floor. And he said he was waiting for another officer and so we waited and we talked a little bit and finally, apparently, the other officer hadn't come and he said, "Well now, you are going to—I'm going to ask you to step forward for induction," something like this. And he called another man into the room who was a typist or secretary, outside clerk I guess, and he asked me to stand up and he was sitting at his desk, and he said, "You are about to enter the armed forces of the United States, and when you take one step forward that step constitutes your entry into the armed forces of the United States."

That may not be the exact words but I think it's pretty close and I stood there and he repeated this once again,

and I stood there and he excused the person he had called into witness this.

I believe this man's name was Larson. Then he asked me to sign a paper, and he said, "Either sign a statement or write the following words. Being aware of my rights under the 5th Amendment, I have no statement to make at this time. And make three copies of it." And I made three copies of that last statement, "Being aware of my rights and under the 5th Amendment, I have no statement to make at this time," and I signed it. And he said, "Then you will be free to go," and so I left.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ELLIOTT ASHTON WELSH, II,
Appellant,
vs.
UNITED STATES OF AMERICA,
Appellee.
No. 21,442

[September 23, 1968]

Appeal from the United States District Court
for the Central District of California

Before: HAMLEY and ELY, Circuit Judges, and POWELL, District Judge

POWELL, District Judge:

This appeal is from a conviction of the appellant for refusal to submit to induction into the Armed Forces in violation of 50 U.S.C. App. §462. This Court has jurisdiction under Rule 37 of Federal Rules of Criminal Procedure and 28 U.S.C. §1291.

The appellant Welsh registered with his local board on February 2, 1960. On December 11, 1961 the board received his completed classification questionnaire (SSS Form 100). He did not then claim to be a conscientious objector.

On December 14, 1961 the board classified the appellant I-A. On January 15, 1963 the board received appellant's application for a permit to leave the United States. The application stated that the appellant's classification was I-A. On February 5, 1963 the board issued a permit

allowing the appellant to depart for a period of one year, which expired March 16, 1964. On March 27, 1964 the appellant was ordered to report for a physical examination. On April 10, 1964 appellant requested and was given a special form for conscientious objector (SSS Form 150). It was completed and received by the board on April 24, 1964. In that form the appellant stated that he was "by reason of * * * belief, conscientiously opposed to participation in war in any form."[1] The appellant had altered the statement in the form by striking out the words "my religious training and" so that the statement read as above. He answered the question, "Do you believe in a Supreme Being?" by putting an X in the box marked "No".[2] He attached a note explaining the nature of his beliefs.

On May 12, 1964 the appellant's local board classified him I-A-O, and on May 25, 1964 the appellant sent the local board a letter amending his SSS Form 150 to request classification as I-O. He claimed exemption from both combatant and non-combatant training and service and requested a personal appearance.

He appeared before the local board on June 9. On June 10 the board informed appellant that he was still classified I-A-O. On June 19, 1964 the board received a letter in which appellant stated he was appealing to the Appeal Board from the refusal to classify him as I-O.

On July 28, 1964 the Appeal Board tentatively determined the appellant should not be classified I-O or any lower class.

On November 15, 1965 the appellant's file was returned by the Appeal Board which classified appellant I-A

1. Plaintiff's Exhibit 1, at 17.
2. *Id.*

by a vote of 3-0. On November 22, 1965 the board mailed the appellant an order to report for induction on December 8, 1965. He reported to the induction center and refused to step forward when his name was called, thereby manifesting his refusal to submit to induction. This prosecution followed.

The appellant raises principal questions as follows:

1. Was the Selective Service System's denial of a conscientious objector classification to appellant without basis in fact and arbitrary, capricious and contrary to law?

2. Were the report and recommendation of the hearing officer and the Department of Justice to the Appeal Board arbitrary, capricious and illegal because based upon unlawful standards?

3. Was the appellant denied a fair hearing before the local board because the board gave appellant too short a hearing or failed to pass upon his eligibility for I-O classification?

4. Was the appellant denied a fair hearing before the Appeal Board in that neither he nor the Appeal Board was given the full report of the FBI or of the hearing officer made to the Department of Justice?

5. Was the appellant denied due process by the induction station's failure to give him an opportunity to complete DD Form 98, Armed Forces Security Questionnaire, as required by the regulations?

6. Did the local board thwart appellant's timely presentation of his request for classification as III-A based on his wife's pregnancy and thus deny him due process of law?

I

Appellant claims that the Appeal Board denial of I-O and I-A-O classifications was without any basis in fact. He also contends that insofar as the Appeal Board decision rested upon the "Supreme Being" clause of section 6(j)[3] it is premised upon an unconstitutional distinction between theistic and nontheistic religious beliefs.

In *Seeger* v. *United States*, 380 U.S. 163, 176 (1965) the Supreme Court explicitly adopted the following test for evaluating conscientious objector claims:

> "A sincere and meaningful belief which occupies in the life of its possessor a place parallel to that filled by the God of those admittedly qualifying for the exemption comes within the statutory definition."

A determinative question posed by application of the *Seeger* test to the facts of this case is whether the sufficiency of a registrant's beliefs is to be measured by strength or source or both.[4] Unquestionably strength of belief (or sincerity) is an accepted criterion for judging conscientious objector claims. See *Seeger* v. *United States*, *supra*, at 185; *Dickinson* v. *United States*, 346 U.S. 389, 396 (1953). The court in *Seeger* also noted, apparently with approval, that:

> "* * * The section excludes those persons who disavowing religious belief, decide on the basis of essentially political, sociological or economic considerations that war is wrong and that they will have no part of it. * * *" *Seeger* v. *United States*, *supra*, at 173.

This quotation obviously contemplates a test based on the source of a registrant's beliefs. The belief is the same for

---

3. Universal Military Training and Service Act, § 6(j), 50 U.S.C. App. § 456(j). The "Supreme Being" clause was omitted from the recent reenactment of the draft law. Military Selective Service Act of 1967, § 7, 81 Stat. 101.

both philosophical and religious objectors, that it is wrong to participate in war.

The government concedes that appellant's beliefs are held with the strength of more traditional religious convictions. But appellant constantly declared that his beliefs stemmed from sociological, economic, historical and philosophical considerations. He denied that his objection to war was premised on religious belief. The Appeal Board was entitled to take him at his word, as he failed to meet the statutory standard, and to deny his request to be so classified.

Appellant next urges us to adopt the well reasoned opinion of Judge Kaufman in *Seeger* v. *United States*, 326 F.2d 846 (2d Cir. 1964), *rev'd*, 380 U.S. 163 (1964). That Circuit Court opinion held that the "Supreme Being" clause of section 6(j) unconstitutionally discriminated between theistic and nontheistic religious beliefs, 326 F.2d at 852-855. But in our case the Department of Justice recommendation quoted the test given above from *Seeger*, 380 U.S. 173. The facts and result of *Seeger* at the Supreme Court level lead to only one conclusion: the Supreme Court deleted the "Supreme Being" clause from the statute, as Mr. Justice Douglas observed "in the candid service of avoiding a serious constitutional doubt." Concurring opinion of Douglas, J., *United States* v. *Seeger*, 380 U.S. at 188 (1965), quoting from *United States* v. *Rumely*, 345 U.S. 41, 47 (1953). We see no need to consider the constitutionality of this clause because it was already *sub silentio* stricken from the statute and was so considered by the Department of Justice in this case.

The hearing officer found "no religious basis for the registrant's conscientious objector claim."[4] His conclusion

4. Plaintiff's Exhibit 1, at 42.

was accepted by the Department of Justice which recommended that the Appeal Board deny appellant's claim for I-O classification. Appellant contends that this recommendation was bottomed on artificial and unlawful standards. In support of this contention appellant relies upon the following observations of the hearing officer: Appellant had not formulated an opinion on euthanasia; he had not formulated an opinion on birth control and, more precisely, upon the question of when life begins in the womb; appellant did not believe in life after death; he did not believe in God or any other entity with authority over man.

A Department of Justice recommendation premised upon an error of law vitiates an Appeal Board classification. *Sicurella* v. *United States*, 348 U.S. 385, 392 (1955). In *Shepherd* v. *United States*, 217 F.2d 942, 946 (9th Cir. 1954), the hearing officer concluded that Shepherd's willingness to participate in theocratic warfare negated his claim of conscientious objection. This court held this conclusion was wrong as a matter of law and reversed Shepherd's conviction. In *Bradley* v. *United States*, 218 F.2d 657, 663 (9th Cir. 1954), *rev'd on other grounds*, 348 U.S. 967 (1955), the hearing officer observed that Bradley believed in using force in self-defense. But the hearing officer did not conclude that this fact negated Bradley's claim. The court distinguished between a legally insufficient adverse conclusion and mere observation of facts which, had they led to an adverse conclusion, would have been legally insufficient to support it. *Bradley* v. *United States*, *supra*, at 663, n. 9. The observations upon which appellant relies were only observations of fact. We assume, arguendo, that none of them necessarily negates appellant's claim for conscientious objector classification. See *Seeger* v. *United States*, 380 U.S. 163 (1965). But the hearing officer did not conclude that these observations negated appellant's claim.

The distinction drawn in *Bradley* v. *United States, supra*, between observations of fact and conclusion of law, controls.

Appellant also suggests that these observations were improper. But appellant altered the Special Form for Conscientious Objectors, denying a religious basis for his beliefs and denying belief in a Supreme Being. These alterations raised uncertainty about the "religious" quality of his beliefs. The purpose of the hearing officer's inquiry is to explore uncertainties. *MacMurray* v. *United States*, 330 F.2d 928, 932 (9th Cir. 1964). How can the hearing officer proceed without inquiring into the application of a registrant's beliefs to ethical, religious, moral and philosophical problems? And what function would the inquiry serve if a registrant's answers could not be transmitted through the Department of Justice to the Appeal Board?

Appellant contends that he was denied a fair hearing before the local board. Specifically, he contends that his personal appearance was too short and that the local board failed to pass upon his eligibility for I-O classification.

When appellant appeared before the local board he declared that he felt his classification should be I-O rather than I-A-O. The reasons for this request, he said, were detailed in his letter of May 25, 1964 (which also contained his request for personal appearance and notice of appeal). He made no attempt to present additional material to the board. Selective Service Regulation 1624.2(B), 32 C.F.R. § 1624.2(b), affords a registrant the opportunity to present "further information." But no regulation requires a board to question a registrant when he says his position has already been stated. Appellant's hearing was short because he had nothing further to say.[5]

5. "I appeared before the board to answer questions about my appeal and to explain my position in the light of those answers.

No unfairness appears in this respect. See *Martin* v. *United States*, 190 F.2d 775, 778-779 (4th Cir.), *cert. den.*, 342 U.S. 872 (1951).

Appellant's contention that the local board failed to pass upon his I-O claim is based upon a letter he wrote after his personal appearance. In that letter he states: "Then one of the board members said 'we don't have authority to pass upon his classification. It will have to go to the Appeal Board.' "[6] If this statement was made as quoted the board member was mistaken. Selective Service Regulations contemplate a decision by the local board following personal appearance of a registrant. 32 C.F.R. § 1624.2(c). Failure to render a decision vitiates a later classification by the Appeal Board. *Knox* v. *United States*, 200 F.2d 398 (9th Cir. 1952). But it does not appear that this statement was made as quoted. In his letter appellant continues: "This quotation is as close as I can recall. A secretary was transcribing the conversation so the statement should be a matter of record."[7] The "record" to which appellant refers states: "Registrant was informed that since he has appealed the I-A-O classification, his file would go to the Appeal Board and they would investigate to determine whether or not he qualifies for a I-O classification."[8] There is no reference to local board jurisdiction, nor any explicit statement that the board would not render a decision. The record is consistent with the probability that the board was informing appellant that his claim was being denied. In fact this appears to be what happened, for the next day appellant received a new notice

---

I asked whether any members of the board had any questions about my appeal. They had none." Appellant's letter of June 18, 1964, Plaintiff's Exhibit 1, at 31-32.

6. *Id.* at 32.
7. Plaintiff's Exhibit 1, at 32.
8. Plaintiff's Exhibit 1, at 29.

of classification from the local board informing him that he was being retained in class I-A-O.[9] This case is distinguishable from *Knox* v. *United States, supra*; the presumption of regularity which was overcome in that case governs here.

Appellant contends he was denied a fair hearing before the Appeal Board because neither the Appeal Board nor appellant was provided with the full report of the FBI investigation or the full report of the hearing officer.

We think appellant's contention directed to the Department of Justice's refusal to provide him with a full copy of the FBI investigative report is without merit. In *United States* v. *Nugent*, 346 U.S. 1, 5 (1953), the Court held:

> "* * * We think that the statutory scheme for review, within the selective service system, of exemptions claimed by conscientious objectors entitled them to no guarantee that the FBI reports must be produced for their inspection. * * *"

Appellant attempts to distinguish *Nugent* because the registrant in that case did not request a copy of the report. This factor was noted by the Court. *United States* v. *Nugent, supra*, at 7, n. 10. But as the quotation above indicates the Supreme Court did not so restrict its decision. Nor can we see any reason why it should be so restricted.

To refute appellant's contention that the entire FBI record should have been forwarded to the Appeal Board it is only necessary to advert to the identical circumstance in *United States* v. *Nugent, supra*, at 7, n. 10.

The same rationale applies to appellant's complaint about the Department of Justice's failure to provide either

---

9. The notice of classification is not mailed until a decision to reclassify or to deny reopening is reached by the board. 32 C.F.R. § 1624.2(d).

appellant or the Appeal Board with the hearing officer's full report. The analogy is strengthened by appellant's presence at the hearing and his consequent knowledge of what transpired there. This knowledge largely obviates the objections to the majority opinion in *Nugent* expressed by Mr. Justice Douglas in dissent. Contentions identical to those made by appellant were considered in *DeRemer* v. *United States*, 340 F.2d 712, 715-717 (8th Cir. 1965). Drawing upon the body of administrative law, and especially considering the unavailability of intra-agency memoranda, the court rejected these contentions. So do we.

Appellant contends his reply to the Department of Justice recommendation, supplied by him in accordance with 32 C.F.R. § 1626.25(e), was never placed before the Appeal Board and that this procedural irregularity vitiated the classification process. He testified:

> "I took the rebuttal to the Appeal Board. * * * [F]inally a clerk came out of her room, and she asked me what I wanted, and I said that I had the letter for the—letter of rebuttal to the Attorney General's letter for the Appeal Board. She said, 'Oh, yes, * * *' And she said, 'Well, I'll see that the Board gets a summary of this letter.' And I said, 'You mean they don't see the letter.' And she said, 'Well, they could if they wanted but they usually don't have a great deal of time and they usually read the summary.'" Record, Vol. 2, at 23.

"It is the settled general rule that all necessary prerequisites to the validity of official action are presumed to have been complied with, and that where the contrary is asserted it must be affirmatively shown." *Lewis* v. *United States*, 279 U.S. 63, 73 (1929) (alternative holding). *Keene*

v. *United States*[10] explained the foundation of this presumption:

> "The presumption which attends these proceedings [local board level] is founded in the policy of the law, and is derived from the faith and credit we owe to official acts of duly constituted authority. As such, it is legally sufficient to sustain the burden of regularity and validity until dissipated by some probative evidence to the contrary."

See also, 9 Wigmore, *Evidence* §§ 2490, 2491 (3rd Ed. 1940); ALI *Model Code of Evidence*, Rule 704, Introductory Note to Chap. VIII (presumptions), Morgan, Forward at 52-65 (1942). There is no showing that the Appeal Board did not receive or consider appellant's letter. This is merely an inference which might, but need not, be drawn. As such, it is insufficient to overcome the presumption of regularity. *Keene* v. *United States*, *supra*, note 10.

II

Before being given an opportunity to submit to induction appellant was asked to re-execute his Armed Forces Security Questionnaire, DD Form 98. He stated that some of the answers he gave the year before would no longer be correct and refused to re-execute the form. AR 601-270, ch. 4, § II, para. 80(b)(2) at 4-7 (1965) declares that a registrant who refuses to execute DD Form 98 will "not be inducted into the Armed Forces pending

10. 266 F.2d 278, 280 (10th Cir. 1959). Keene contended that the board which classified him acted without a quorum. A board or panel thereof consists of three or more members. 50 U.S.C. App. § 460(b)(3). A majority of the members of the board or panel constitutes a quorum. 32 C.F.R. § 1604.52a(d). The vote which classified Keene was 2-0. Another vote, four years later, was 4-0. If the number of board members had not changed (and there was no evidence on this point either way) the initial vote was taken without a quorum. The court recognized that lack of a quorum might be inferred, but held this evidence insufficient to overcome the presumption of regularity.

completion of a thorough investigation." The investigative process is detailed in AR 604-10, § III, para. 18 (1959); 604-10, §§ IV, V (1959). Rather than delay appellant's induction pending investigation, induction station personnel ordered him to step forward. Appellant now contends that this procedural irregularity vitiates the command to step forward and, therefore, his conviction. We cannot agree.

The rule is well established that "procedural irregularities or omissions which do not result in prejudice to the registrant are to be disregarded." *Knox* v. *United States,* 200 F.2d 398, 401 (9th Cir. 1952). See *Edwards* v. *United States,* ..... F.2d ..... (9th Cir., May 10, 1968). Appellant did not offer to prove that an investigation by military intelligence would have uncovered evidence that he was a security risk.

None of the factors which have led us to presume prejudice from procedural omissions are present in this case. Comparison of appellant's contentions with our decision in *Briggs* v. *United States,* ..... F.2d ..... (9th Cir. June 26, 1968) will illustrate the absence of these factors. In *Briggs,* induction station personnel denied the registrant a physical inspection required by AR 601-270, ch. 3, III, para. 69 (1965). We presumed prejudice and reversed. A registrant's failure to take physical examinations precludes him from challenging his classification; he is said to have failed to exhaust his administrative remedies. See the discussion of *Falbo* v. *United States,* 320 U.S. 549 (1944) in *Estep* v. *United States,* 327 U.S. 114, 123 (1946). The Army's refusal to give a physical inspection should bear equivalent consequences.

Execution of DD Form 98 has not been held to be an administrative remedy which the registrant must exhaust.

Also, a medical deferment is granted at least partially for the benefit of the individual registrant. But rejection by the Army for security reasons, like rejection for felony conviction, is wholly for the benefit of the Army and may be waived. See *Nickerson* v. *United States*, 391 F.2d 760, 762-63 (10th Cir. 1968); *Bjorson* v. *United States*, 272 F.2d 244, 249 (9th Cir. 1959), *cert. den.*, 362 U.S. 949 (1960), *overruled in part and on other grounds* in *Daniels* v. *United States*, 372 F.2d 407, 414 (9th Cir. 1967); *Korte* v. *United States*, 260 F.2d 633, 637 (9th Cir. 1958), *cert. den.*, 358 U.S. 928 (1959).

The overriding objective of selective service is "to raise an army speedily and efficiently." *Falbo* v. *United States*, *supra* at 553. But appellant would have us presume prejudice from the Army's refusal to conduct a useless investigation of his political and social background. Without a real showing of prejudice there is no reason to require such a waste of military intelligence resources. Nor should any obstinate inductee be given an opportunity to delay his induction for possibly months by refusing to execute the security questionnaire.

III

Appellant claims that he should have been granted a III-A (dependency) deferment. He argues that proper presentation of his request for this deferment was thwarted by the local board clerk. Appellant testified that he visited his local board to inform it that he had moved and that his wife was pregnant and that he and his wife had made an appointment with a doctor to confirm the pregnancy. He further testified:

> "When I asked if I could give the board more information than I had given them, I had filled out an ad-

dress, change of address form, the clerk said to me, 'What is your classification?' I said 'my classification is I-A-O.' The clerk then said 'If we want any more, if we want any more information from you, we'll send you a form.'

Q. Did that form ever come?

A. No sir." Record, Vol. 2 at 19

This evidence does not support appellant's contention that assertion of a III-A claim was thwarted by the clerk. Nowhere does it appear that appellant told the clerk his wife was pregnant. It is probable that the clerk thought appellant was referring to further evidence in support of his I-A-O classification (conscientious objector available for non-combatant duty). Because appellant had already received this classification, to the best of the clerk's knowledge additional supporting information was unnecessary. As appellant relates it, although he was thinking of his wife's pregnancy, he spoke to the clerk only generally of "more information." It was appellant's duty to request the III-A deferment in writing accompanied by a doctor's certificate. 32 C.F.R. §§ 1625.2 (writing), 1622.30(c)(3) (certificate of pregnancy). The requirement of a writing is mandatory and must be followed if the deferment is to be granted. *Shaw* v. *United States*, 264 F.2d 118, 119-120 (9th Cir. 1959).

Appellant submitted with his brief evidence of his present III-A status.[11] While this provides appellant with a present deferment, it has no bearing on the validity of his I-A classification at the time he refused to submit to induction. *Cox* v. *United States*, 332 U.S. 442, 454

11. Appendix B to Appellant's Opening Brief.

(1947); *Gatchell* v. *United States*, 378 F.2d 287, 292 (9th Cir. 1967).

Affirmed.*

HAMLEY, Circuit Judge (dissenting):

As stated in the majority opinion, the Hearing Officer found "no religious basis for the registrant's conscientious objector claim." His conclusion was accepted by the Department of Justice as the basis for its recommendation to the Appeal Board that Welsh's claim for a I-O or I-A-O classification be denied. The Appeal Board implicitly followed that recommendation in denying either of these classifications. The majority holds that, under the circumstances of this case, there was no judicially cognizable administrative error in this regard which undermines the conviction. I respectfully disagree.

In reaching its conclusion, the majority addresses itself to two questions: (1) was the Appeal Board's denial of I-O or I-A-O classifications without any basis in fact? and (2) does the Appeal Board decision rest upon an unconstitutional distinction between theistic and non-theistic

---

*Note: The dissenting opinion of Judge Hamley, while based on other grounds, mentions the possible unconstitutionality of the "religious training and belief" provision of section 6(j) of the Act. The majority feels that since it was not listed as one of the questions presented in appellant's opening brief or argued there it does not require comment in the majority opinion. The only error claimed is the denial of the motion for judgment of acquittal and this question was not presented in that motion.

The majority feels that any application for relief under 28 U.S.C. § 2255 on this ground would find no support in this record and would be met by the prior holdings of this court sustaining the religious exemption against Establishment Clause attack: Etcheverry v. United States, 320 F.2d 873, 874 (9th Cir.), cert. den., 375 U.S. 930 (1963), reh'r den., 375 U.S. 989, 376 U.S. 939 (1964), 380 U.S. 926 (1965); Clark v. United States, 236 F.2d 13, 23-24 (9th Cir.), cert. den., 352 U.S. 882, reh'r den., 352 U.S. 937 (1956) George v. United States, 196 F.2d 445, 450-452 (9th Cir.), cert. den., 344 U.S. 843 (1952).

religious beliefs? The majority gives a negative answer to both of these questions.

Concerning the second question, I agree with the majority holding, and for the reasons stated in the majority opinion. The Appeal Board decision is not premised upon the "Supreme Being" provision of section 6(j). The Department of Justice report, on the basis of which the Appeal Board acted, noted that, under *Seeger* v. *United States*, 380 U.S. 163, the term "Supreme Being" was given such a broad reading that, in effect, it added nothing to the "religious training and belief" clause.

But the majority has failed to discuss another facet of the constitutional question, namely whether, apart from the "Supreme Being" clause, in predicating its decision on the "religious training and belief" clause of section 6(j), the Appeal Board violated the Establishment of Religious Clause of the First Amendment.

In my opinion this latter question is clearly presented on this appeal because it is inherent in any attack upon the statute predicated upon the Establishment of Religion Clause of the First Amendment. Thus it is immaterial that, in his opening brief, Welsh did not discuss this precise issue other than to point out that the sincerity of his conscientious objection was not only established by the undisputed evidence, but was conceded by the Hearing Officer.

Defendant naturally concentrated his attention in that brief on the broad reading which *Seeger* gave the Supreme Being and religious training and belief clauses of the statute. If he prevailed on that argument he did not need a ruling that the statute was unconstitutional as applied, just as the Supreme Court, in *Seeger*, avoided the constitutional issue by giving the statute a broad reading. But

there was implicit in defendant's presentation his underlying position that, unless given that broad reading here, the statute is unconstitutional as applied. If the opening brief leaves any doubt as to defendant's basic constitutional position, it was amply clarified in his reply brief, where defendant said:

> "If this Court should hold that appellant's belief is outside the scope of the Act, then the constitutionality of the Act is in issue. For the reasons cited by the Second Circuit at 326 F.2d 846, appellant respectfully submits that the granting of privileges to the religious which are not granted to the nonreligious upon the same basis is an establishment of religion and violates the guarantees of the First Amendment and the Due Process clause of the Fifth Amendment."

I believe this question is in the case and should be squarely met by the majority before it concludes that the conviction should be affirmed. Indeed, it is futile to affirm without deciding this constitutional issue for, unless decided here, it can be immediately renewed in a proceeding under 28 U.S.C. § 2255 (1964). As indicated below, the only reason I do not grapple with that constitutional issue in this dissent is because I would reverse on other grounds.

As the majority points out in the note attached to their opinion, any application for relief on this ground under 28 U.S.C. § 2255 would be met by several adverse holdings of this court. But experience teaches that constitutional pronouncements by the courts are always open for reconsideration. The Ninth Circuit decisions cited in the note to the majority opinion seem to rest, in the final analysis, on the reasoning that whatever the Government may take away altogether (such as exemption from military service) it may grant on any condition it chooses (such as religious training and belief). I do not believe this reasoning is acceptable in the present constitutional climate.

While deferment on the ground of conscientious objection is a privilege, it cannot be granted or withheld on unconstitutional grounds. *United States* v. *Seeger*, 2 Cir., 326 F.2d 846, 851, affirmed on other grounds, 380 U.S. 163. See also, *Sherbert* v. *Verner*, 374 U.S. 398, 404-405, and note 6 and cases there cited; *Baggett* v. *Bullitt*, 377 U.S. 360, 380; *Keyishian* v. *Board of Regents*, 385 U.S. 589, 605-606. The majority recognizes this when it discusses, on the merits, the first of the two constitutional questions referred to above.

The dimensions of the constitutional problem which the majority opinion does not discuss become clear when note is taken of relevant observations in past decisions of the Supreme Court.

In *Everson* v. *Board of Education of the Township of Ewing*, 330 U.S. 1, the Supreme Court said:

> "The 'establishment of religion' clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, *aid all religions*, or prefer one religion over another. Neither can force nor influence a person to go to or remain away from church against his will or force him to profess *a belief or disbelief in any religion.* No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance." (330 U.S., at 15-16, emphasis supplied)

This language was quoted with approval in *McCollum* v. *Board of Education*, 333 U.S. 203, 210, in which the Court rejected a strenuous effort to have the quoted language disregarded as dicta, or to have it repudiated. In *Torcaso* v. *Watkins*, 367 U.S. 488, the Supreme Court again quoted the *Everson* language with approval, and added:

> "We repeat and again reaffirm that neither a State nor the Federal Government can constitutionally force

> a person 'to profess *a belief or disbelief in any religion.*' Neither can constitutionally pass laws or impose requirements *which aid all religions as against non-believers,* and neither can aid those religions based on a belief in the existence of God as against those religions founded on different beliefs." (367 U.S., at 495, footnotes omitted and emphasis supplied)

The broad interpretation given by the Supreme Court in *Everson* to the Establishment Clause of the First Amendment, was again approved in *McGowan* v. *Maryland,* 366 U.S. 420, 442. And in *Abington School District* v. *Schempp,* 374 U.S. 203, 216, the Supreme Court, once more quoting *Everson,* stated that it has "rejected unequivocally the contention that the Establishment Clause forbids only governmental preference of one religion over another."

None of these Supreme Court decisions dealt with the constitutionality of the "religious training and belief" provision of section 6(j) of the Act now in question. But, to say the least, the rationale of these other decisions provides fodder for a strong argument that the "religious training and belief" provision of section 6(j) cannot withstand a constitutional challenge.

It is in this setting that I turn to the first question dealt with by the majority on this branch of the case. But for the majority holding that the Appeal Board denial of I-O and I-A-O classifications has a basis in fact because there is evidence to indicate that Welsh's conscientious objections are not premised on "religious belief," we would not have to reach the constitutional questions. It may be added that it is acceptable appellate practice to give statutory language a broad or narrow reading if, by so doing, the constitutionality of the statute can be saved. In effect, this is what the Supreme Court did in *Seeger,* in construing the term "Supreme Being." As Justice Douglas said in his concurring opinion in that case:

> "The legislative history of this Act leaves much in the dark. But it is, in my opinion, not a *tour de force* if we construe the words 'Supreme Being' to include the cosmos, as well as an anthropomorphic entity. If it is a *tour de force* so to hold, it is no more so than other instances where we have gone to extremes to construe an Act of Congress to save it from demise on constitutional grounds. In a more extreme case than the present one we said that the words of a statute may be strained 'in the candid service of avoiding a serious constitutional doubt.' *United States* v. *Rumely*, 345 U.S. 41, 47." (380 U.S. at 188, footnote omitted)

In holding that there is a basis in fact for the Appeal Board's determination that Welsh's conscientious objection is not based on religious training and belief, the majority reasons: (1) that, under *Seeger*, the sufficiency of a registrant's conscientious objection is to be measured by the *strength* of the objection plus the *source* of the objection; (2) Welsh's objection has the requisite strength, as the Government concedes; but (3) his objection does not have the requisite source, because it is not premised upon a religious belief.

I agree that, under section 6(j) of the Act, as construed in *Seeger*, the conscientious objection must be of a religious nature. But, having regard for all of the circumstances of this case, I do not believe that there is a basis in fact for a determination that Welsh's objection was not of a religious nature in the statutory sense.

It is now necessary to review, in considerable detail, the statements made by Welsh, in the administrative proceedings, concerning the basis of his conscientious objection.

In his conscientious objector form, signed on April 24, 1964, Welsh struck the words "my religious training and"

from the statement of the source of his conscientious objection. He checked the "no" square opposite the question, "Do you believe in a Supreme Being?" In one item of this form, Welsh was requested to describe the nature of his belief and whether his "belief in a Supreme Being involves duties which to you are superior to those arising from any human relation." The quoted portion of this item was not applicable to Welsh because he had already indicated that he did not believe in a Supreme Being. This probably explains why, in an attached sheet giving his answer to this inquiry, Welsh stated that his belief that one should abstain from violence toward another person:

> "is not 'superior to those arising from any human relation.' On the contrary, *it is essential to every human relation.*" (Emphasis in original.)

In this attached sheet Welsh added that he could not conscientiously comply with the Government's insistence that he assume duties which he feels "are immoral and totally repugnant." In answer to another inquiry in this form, Welsh attached another sheet stating, among other things, that he came to his realization that it is wrong to wilfully kill or injure another through a series of conversations with a number of pacifists.

At the time Welsh made these statements, section 6(j) defined "religious training and belief" as "an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation. . . ." The "Supreme Being" provision of the religious test was dropped from section 6(j) on June 30, 1967. 81 Stat. 100-104.

The Supreme Court did not decide *Seeger* until March 8, 1965. In that decision, 380 U.S. 163, the Supreme Court made it clear that one could have a religious belief

within the meaning of section 6(j) of the Act without believing in a Supreme Being as that term is usually understood.

The *Seeger* decision had been issued when Welsh next made statements to the administrative agency concerning the basis of his conscientious objection, in a letter dated June 22, 1965. Apparently by that time he had been told that the term "Supreme Being," as used in the statute, may have a broader meaning than he had originally supposed. Nevertheless, as indicated by footnote 3 in that letter, Welsh was still puzzled concerning the extent to which, if any, the "Supreme Being" clause affected the "religious training and belief" test of section 6(j).

In his letter of June 22, 1965, Welsh went on to explain that it is his belief that each of us possesses "some sort of ethical apparatus, a conscience, if you will." Expressing the view that it is impossible to assert the absolute truth or falsity of an ethical law Welsh adds, in a footnote, extensive quotations from Ludwig Wittgenstein, Logisch-philosophische Abhandlung, Routledge & Kegan Paul, London, 1963, page 145, translated by D. F. Pears and B. F. McGuinness. Among the quotations thus approved by Welsh is one to the effect that the sense of the world must lie outside the world. According to this writer,

> "If there is any value that does have value, it must lie outside the whole sphere of what happens and is the case."
>
> "Ethics is transcendental."

At a later point in this letter, Welsh states that, in our failure to recognize the political, social and economic realities of the world we, as a nation, fail our responsibility as a nation. He also inquires, "To what degree are we

economically and socially committed to 'look for' aggression?" He added, in another footnote, "I am afraid reason has already subverted my commitment to the military ethic."

On July 15, 1965, Welsh was interviewed by Owen J. Brady, a Department of Justice Hearing Officer. During that inquiry, Welsh submitted a copy of his letter of June 22, 1965, as "Exhibit A." In a six-page letter dated August 23, 1965, the Department of Justice gave the Appeal Board a report based on this inquiry. Among other things, this report recites that Welsh attended a Sunday School weekly from age twelve to age sixteen or seventeen, but had not attended a church since then, except on five or six occasions. According to this report, Welsh stated that his mother made him attend Sunday School and he "never got anything out of it."

Based on his questioning of Welsh, the Hearing Officer reported that Welsh has no belief in the existence of God or a Supreme Being, but believes in the "natural law" as a force outside of men, such force not being an entity. According to the Hearing Officer, Welsh described "natural law" as laws affecting the relationship of human beings such as the feeling of gregariousness; and was of the view that ethics are implicit within us governing the conduct of individuals. Welsh, the report states, does not believe in a life after death or in what might be called a human soul.

The report states that Welsh reiterated that he did not believe in taking a human life but he did not see it as a moral or religious wrong but simply as a social "error," or illogical act. The Hearing Officer reported that several times Welsh denied that any of his thinking had a religious basis. Welsh, according to this report, stressed that his opinions have been formed by reading in the fields of history and sociology, and that they are purely "natural" as

opposed to religious. The Hearing Officer found that the registrant is sincere in his convictions but that his ideas are incomplete and are in the process of formulation. The Hearing Officer found no religious basis for the registrant's conscientious objector claim.

On October 13, 1965, Welsh wrote an eight-page letter to the Appeal Board commenting upon the Department of Justice report summarized above. Among other things, Welsh stated in his letter:

> ". . . I assumed Mr. Bradley was using the word 'religious' in the conventional sense, and, in order to be perfectly honest did not characterize my belief as 'religious.' I do believe the taking of life—anyone's life—to be morally wrong. It is not anyone's business to take anyone's life."

In this letter, Welsh also made the following significant comments:

> ". . . I certainly do not mean to imply, that the religious training I received there [in Sunday School] had *nothing* to do with the ethical or moral values I live by." (Emphasis in original.)

> ". . . Mr. Bradley insisted upon describing what I called 'natural law' as a 'force,' whereas I simply meant 'natural law' to be taken as 'the laws of nature.' The laws of nature are 'outside,' or beyond the control of men, but it is to perpetuate a semantic absurdity to characterize either 'natural law' or 'force' as an 'entity,' and in trying to avoid doing so I may have caused Mr. Bradley to misunderstand me."

> ". . . I believe both ethical and religious values usually arise from the same source: the individual's concern for other individuals."

> ". . . This concern [each individual's concern for the rest], it seems to me, is implicit in all religious belief,

even the most primitive, where, though its expression seems sometimes to be bizarre, it still acts to govern people's relationships, one to another."

"This, I suppose, is the crux of my problem of explaining my beliefs in religious terms. Perhaps I erred in taking such pains to point out that I do not believe in the 'standard notion' of God. I think my beliefs could be considered religious, in the sense I have just explained. I do not *call* myself religious, simply because most people then assume that I believe in God, in the conventional sense." (Emphasis in original.)

These observations by Welsh are in the last statement he filed in the administrative proceeding and are the best evidence of the nature of his conscientious objection. In appraising them we should give heed to this statement in the *Seeger* opinion:

"While the applicant's words may differ, the test is simple of application. It is essentially an objective one, namely, does the claimed belief occupy the same place in the life of the objector as an orthodox belief in God holds in the life of one clearly qualified for exemption?

"Moreover, it must be remembered that in resolving these exemption problems one deals with the beliefs of different individuals who will articulate them in a multitude of ways. In such an intensely personal area, of course, the claim of the registrant that his belief is an essential part of a religious faith must be given great weight." (380 U.S. at 184).

It seems to me that, read as a whole, with particular emphasis upon his last statements, Welsh's disclaimer of a religious motivation was predicated upon a misunderstanding of the statutory meaning of the term, as construed in *Seeger*. When he fully realized the broad reading which *Seeger* gave to that term, Welsh made it clear that he did

have a religious motivation. Accepting that premise, the fact that his belief was also predicated in part on political, sociological or philosophical views, is immaterial. Likewise, although Welsh may have predicated his belief to a substantial extent on a personal moral code, that was not the sole basis of his belief. As the Supreme Court said in *Seeger*:

> "We have construed the statutory definition broadly and it follows that any exception to it must be interpreted narrowly. The use by Congress of the words 'merely personal' seems to us to restrict the exception to a moral code which is not only personal but which is the sole basis for the registrant's belief and is in no way related to a Supreme Being. It follows, therefore, that if the claimed religious beliefs of the respective registrants in these cases meet the test that we lay down then their objections cannot be based on a 'merely personal' moral code." (380 U.S. at 186).

See, also, *Fleming* v. *United States*, 10 Cir., 344 F.2d 912, where the court said:

> "As we read the Seeger case, it clearly lays down the rule that before a conscientious objector classification may be denied on the ground that the applicant's beliefs are based upon 'political, sociological, or philosophical views or a merely personal moral code', those factors must be the sole basis of his claim for the classification." (344 F.2d at 915-916).

It is important to remember that the statute does not distinguish between externally and internally derived beliefs. *Seeger*, 380 U.S. at 186. Once it is determined that the basic belief does not derive exclusively from political, sociological or philosophical views, or a purely personal moral code, the source of the belief ceases to be a relevant subject of inquiry. The question then is only whether it

is held with the requisite strength. Under *Seeger*, 380 U.S., at 176 and 184, it is held with the requisite strength if it occupies the same place in the life of the objector as an orthodox belief in God holds in the life of one clearly qualified for exemption.

As I appraise this record, there is no basis in fact for holding that Welsh's beliefs on which his conscientious objection is premised, do not occupy this place in his life. He is willing to go to jail rather than do violence to his beliefs, which is more than can be said for many who profess a belief in a Supreme Being.

Moreover, I am not sure that the correctness of the Appeal Board's determination as to the adequacy of Welsh's beliefs is to be judged by whether there is any basis in fact for such determination. The Supreme Court did not seem to apply such a measure in applying the principles announced in *Seeger* to the three cases decided under that title. It is probably just a question of whether the Appeal Board applied the right test. In my opinion it did not.

I thus do not reach the critical constitutional question of whether the "regligious training and belief" provision of section 6(j) of the Act, as here applied, violates the "Establishment of Religion" Clause of the First Amendment. The result reached by the majority represents a negative answer to that constitutional question, but the majority has not said why.

I would reverse.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Excerpt from Proceedings of Monday,
September 23, 1968

Before: HAMLEY and ELY, Circuit Judges, and POWELL, District Judge

Order Directing Filing of Opinion and Dissenting Opinion and Filing and Recording of the Judgment

ORDERED that the typewritten opinions this day rendered by this Court in above cause be forthwith filed by the Clerk, and that a judgment to be filed and recorded in the minutes of this Court in accordance with the majority opinion rendered.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Excerpt from Proceedings of Friday,
January 31, 1969

Before: HAMLEY and ELY, Circuit Judges, and POWELL, District Judge

Order Denying Petition for Rehearing

On consideration thereof, and by direction of the Court, IT IS ORDERED that the petition of Appellant filed October 7, 1968 and within time allowed therefor by rule of court, for a rehearing of above cause be, and hereby is denied.

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

UPON CONSIDERATION of the application of counsel for petitioner(s),

IT IS ORDERED that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including April 1, 1969.

/s/ W. O. Douglas
Associate Justice of the Supreme Court of the United States

Dated this 26th day of February, 1969.

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C., 20543

October 13, 1969

J. B. Tiez, Esq.
257 South Spring Street
410 Douglas Building
Los Angeles, California 90012

RE: WELSH v. UNITED STATES
No. 76, October Term, 1969

Dear Mr. Tiez:

This will inform you that the Court today took the following action in the above-entitled case:

> "The petition for a writ of certiorari is granted and the case is placed on the summary calendar. This case is set for oral argument with No. 305 in which further consideration of the question of jurisdiction was this day postponed."

I enclose a memorandum describing the time requirements and procedures under the Rules and a copy of the Rules.

The additional docketing fee of $50, Rule 52(a) is due and payable.

For your information, counsel are as follows in *United States* v. *Sisson*, No. 305, October Term, 1969:

For Appellant
Hon. Erwin Griswold
Solicitor General
Department of Justice
Washington, D. C. 20530

For Appellee
John G. S. Flym, Esq.
Foley, Hoag & Eliot
148 State St.
Boston, Mass. 02109

Very truly yours,

John F. Davis
Clerk
By /s/ Helen K. Loughran
(Mrs.) Helen K. Loughran
Assistant Clerk

AIRMAIL
Enclosures